

October 21, 2008



**TRANSCRIPT
October 21, 2008**

MONTGOMERY COUNTY COUNCIL

PRESENT

Councilmember Michael Knapp, President
Councilmember Phil Andrews
Councilmember Roger Berliner
Councilmember Marc Elrich
Councilmember Valerie Ervin
Councilmember Nancy Floreen
Councilmember George Leventhal
Councilmember Don Praisner
Councilmember Duchy Trachtenberg



October 21, 2008

1 MICHAEL KNAPP: Good morning, everyone.
2 Welcome to the County Council for Tuesday, October 21st, 2008.
3 We will start with a moment of silence.
4 But before I get there this morning I had some sad news as I came into the office this
5 morning.
6 We had a car accident last evening in Hawkins Creamery Road in Johnson Farm Drive up
7 in Laytonsville-Damascus area.
8 Unfortunately, there were five teenagers in the car and one of those five, Ryan Didone, is
9 the son of the Commander of the Fifth Police District, Tom Didone.
10 And unfortunately, he died last evening.
11 And one of the other youth in the car is pretty challenged.
12 He's still in serious condition, a critical condition, in Shock Trauma in Baltimore.
13 The other three youths in the car apparently are--have non-life threatening injuries.
14 And so as we rise for a moment of silence, I would ask us to please keep Commander
15 Didone and including Ryan and his siblings and Ryan's mother, Marlene Didone, in your
16 thoughts and in your prayers.
17 So, I ask you to please rise.
18 Thank you all very much.
19 We now turn to a presentation by--in recognition of Domestic Violence Prevention Month
20 by Councilmembers Trachtenberg and Andrews.
21 And as they are proceeding to the front, I would just make note of the exhibit that is across
22 at the Circuit Court, "A Line in the Sand." It's kind of commemorating the history of
23 domestic violence, you know, actions in the State of Maryland to recognize the issues
24 associated with domestic violence and the legislative history to make sure that we are
25 doing the right things.
26 It's a wonderful exhibit and it really documents, unfortunately, the short amount of time
27 which had been focused on domestic violence in this country, in particular in the State of
28 Maryland, but the great strides we in the State of Maryland have taken to make sure that
29 domestic violence is adequately addressed.
30 So, with that, Councilmember Trachtenberg and Council Vice President Andrews.
31 DUCHY TRACHTENBERG: Well, thank you very much, President Knapp.
32 This is an important recognition.
33 Domestic violence is something that permeates every level of society and has real impact
34 on the community and on families.
35 And obviously, we have, over the years here in Montgomery County, developed a very
36 comprehensive community response to domestic violence and our volunteers in particular
37 play a big part in that.
38 And the House of Ruth is here today represented by Carole Alexander and they have a
39 fabulous program that's offered to both young women and women who are married and
40 involved unfortunately in abusive situations.



October 21, 2008

1 They offer services in the court house, but most importantly, they also offer other services
2 in the community.

3 And so, we want to recognize that today.

4 I know Council Vice President Andrews has also done a lot of work in the area of
5 domestic violence preventions so I'd ask Phil.

6 If you'd like to make some comments?

7 PHIL ANDREWS: Thank you, Councilmember Trachtenberg.

8 Domestic violence is a crime that we can have a big impact in reducing the severity of and
9 in some cases, preventing.

10 And we are working hard as a county across agency lines and with private partners like
11 the House of Ruth to do that, to provide support for victims of domestic violence, to
12 educate young people about signs of domestic violence in relationships so that they can
13 take steps to protect themselves so that young people know what to look for; and with our
14 law enforcement agencies to make sure that have effective prosecution and protection for
15 those folks who are in great danger of being abused or being killed by their abuser.

16 So, we need to do more but we are making good strides and Councilmember

17 Trachtenberg has been a tremendous leader in working in this for years.

18 And I'm pleased to join her here and I thank the House of Ruth for their excellent work.

19 CAROLE ALEXANDER: Thank you.

20 DUCHY TRACHTENBERG: So, I'm going to go ahead and read the proclamation and
21 then Carole had asked...

22 CAROLE ALEXANDER: Just very briefly.

23 DUCHY TRACHTENBERG: Okay.

24 The County Council of Montgomery County Maryland whereas domestic violence is a
25 serious crime that affects people of all races, ages, income levels and gender; whereas
26 the crime of domestic violence violates an individual's privacy, dignity, security and
27 humanity due to the systematic use of physical, emotional, sexual, psychological and
28 economic control or abuse; and whereas all people have the right to be safe in their
29 homes; and whereas approximately one in five female high-school students reports to
30 being physically and/or sexually abused by a dating partner; and whereas domestic
31 violence, child abuse and youth violence are connected--studies suggest that between 3.3
32 in million children witness some form of domestic violence annually; and whereas the
33 House of Ruth is the area's largest and most comprehensive domestic violence program
34 offering services for victims, their children, friends and family, teens, and abuses.

35 Now, therefore, be it resolved that the Montgomery County Council claims the month of
36 October 2008 as Domestic Violence Prevention Month in Montgomery County.

37 And be it further resolved the Montgomery County Council urges all of our residents to join
38 with the House of Ruth to work to stop this tragedy from occurring in Montgomery County
39 and encourages residents, employers and others in our community to be aware that this is
40 a problem that must be addressed by everyone; presented on this 21st day of October in
41 the year 2008 and signed by our Council President, Michael J. Knapp.

October 21, 2008



1 CAROLE ALEXANDER: Thank you so much.
2 Thank you so much.
3 DUCHY TRACHTENBERG: Did you want to make some comments?
4 CAROLE ALEXANDER: Yeah, sure.
5 I would love to.
6 Thank you, Councilwoman, and thank you, Councilman.
7 I am so grateful to be here today, in large part, to first of all, to commend both of you and
8 certainly the Council as a whole for the leadership that you've provided not only in
9 Montgomery County, but in the state.
10 I think in creating the family violence center initiative that you have done a tremendous
11 service as a model to other jurisdictions who say, "Oh, we can't do this.
12 We can't afford it." I think that the work is going on while will be a struggle, I think will
13 clearly enhance the protection of thousands of victims over the years.
14 So, I commend you for your leadership around that.
15 I think also that it has really been our pleasure to serve in Montgomery County and to
16 provide services to thousands of victims in the Circuit Court here.
17 And we screen every victim who comes through the court seeking a civil order of
18 protection.
19 And in that service, we are able to identify people who may not have thought that they
20 were eligible for services or protection, and in fact, we are able to represent them and
21 provide them with a level of relief that they would not otherwise have been able to obtain.
22 So, again, we are very grateful to be here.
23 We look forward to a continuing partnership with you all and we thank you.
24 PHIL ANDREWS: Thank you.
25 DUCHY TRACHTENBERG: Thank you very much.
26 We want to take picture.
27 CAROLE ALEXANDER: Okay.
28 Okay.
29 I'm clearly inexperienced at this.
30 PHIL ANDREWS: Thank you.
31 CAROLE ALEXANDER: Thank you, both.
32 DUCHY TRACHTENBERG: We look forward to having you work with us at the Family
33 Justice Center.
34 CAROLE ALEXANDER: Thank you.
35 Thank you.
36 MICHAEL KNAPP: Thank you, Councilmember Trachtenberg and Council Vice-President
37 Andrews.
38 Ms. Lauer, any general business, announcements, acknowledgments?
39 Ms. Lauer: Just the minutes.
40 MICHAEL KNAPP: Just the minutes, all right.
41 Thank you so much.



October 21, 2008

1 Madam Clerk, are there minutes to approve.
2 CLERK: Yeah, the minutes of September 23rd for approval.
3 MICHAEL KNAPP: Is there a motion?
4 GEORGE LEVENTHAL: Yeah.
5 MICHAEL KNAPP: There's a motion by Councilmember Leventhal.
6 Is there a second?
7 NANCY FLOREEN: Second, if we must.
8 MICHAEL KNAPP: If we must, okay, Councilmember Floreen.
9 Is there discussion on the minutes?
10 Seeing none, all in support indicate by raising your hand.
11 That is unanimous.
12 Thank you very much.
13 We now have the consent calendar before us.
14 Is there a motion?
15 GEORGE LEVENTHAL: Motion to approve the consent calendar.
16 MICHAEL KNAPP: Thank you, Mr. Leventhal.
17 Is there a second?
18 DUCHY TRACHTENBERG: Second.
19 MICHAEL KNAPP: Seconded by Councilmember Trachtenberg.
20 PHIL ANDREWS: He is so amenable today.
21 MIKE KNAPP: He is today.
22 Anything else anyone wants to get done, ask Mr. Leventhal.
23 Is there discussion on the consent calendar?
24 Seeing none, all in support, indicate by raising your hand.
25 That is unanimous.
26 Thank you very much.
27 We now turn to District Council Session.
28 Our first action is resolution to approve use of Advanced Land Acquisition Revolving Fund
29 for Acquisition of Real Property.
30 We actually need a motion for that.
31 PHIL ANDREWS: I'll move it.
32 NANCY FLOREEN: Seconded.
33 MICHAEL KNAPP: Moved by Council Vice-President Andrews, seconded by
34 Councilmember Floreen.
35 Ms. Michaelson, any anything, I think the pack was pretty self-explanatory.
36 MARLENE MICHAELSON: Exactly, this is recommended in the Shady Grove Sector Plan.
37 MICHAEL KNAPP: Okay.
38 So, for those who are watching, Park and Planning Commission is negotiating a land
39 purchase contract for a 9.8 acres of the FEDMA crossing property for a local park
40 recommended in the Shady Grove Sector Plan.
41 That is what's before us.



October 21, 2008

1 Is there any discussion?
2 Councilmember Floreen?
3 NANCY FLOREEN: Is this money that we're benefiting from the reimbursement for ICC
4 land?
5 MARLENE MICHAELSON: Yes, it is.
6 That is what ALARF is flushed with right now with payments from ICC.
7 NANCY FLOREEN: Yes, so it's fitting indeed that this land be acquired in particular.
8 MICHAEL KNAPP: It is.
9 NANCY FLOREEN: Great.
10 MICHAEL KNAPP: The land purchase agreement is attached to our document.
11 The cost of the acquisition will not exceed \$4 million.
12 I like to hear when we say stuff like that, we're not to exceed.
13 That's good.
14 I see no further discussion, all in support--oh, Councilmember Leventhal?
15
16
17 GEORGE LEVENTHAL: I am sorry.
18 I didn't see.
19 Are there any structures on the property?
20 DUCHY TRACHTENBERG: No.
21 MICHAEL KNAPP: Okay, seeing no further discussion.
22 All in support of the Advanced Land Acquisition Revolving Fund purchase of FEDMA
23 crossing property; please indicate by raising your hand.
24 That is unanimous.
25 Thank you very much.
26 We now turn to Subdivision Regulation Amendment 08-02 Alternative Review Committee
27 functions.
28 Let me see if I have the right one in front of me.
29 October 6th, the committee, the PHED, Planning, Housing and Economic Development
30 Committee recommended approval.
31 SRA 08-02 is introduced.
32 The committee believe they are moving the alternative review committee from the
33 subdivision approval process to allow more transparent subdivision approval process.
34 SRA-0802 would continue to allow flexibility to exceed master plan recommendations for
35 the purpose of accommodating moderately-priced dwelling units to ensure that we can
36 accommodate that policy.
37 That's important to our county as well.
38 We need a motion for that?
39 Okay, we need a motion for SRA 08-02?
40 DUCHY TRACHTENBERG: Has the committee recommended that?
41 MICHAEL KNAPP: That's what I thought.



October 21, 2008

1 Okay, I think corrections' here at the contract.
2 Okay.
3 We have before us SRA 08-02.
4 Is there a discussion?
5 Councilmember Leventhal?
6 GEORGE LEVENTHAL: I may have missed it.
7 Has this Council acted on the elimination of buyouts?
8 MICHAEL KNAPP: No, we have not yet.
9 The committee is still...
10 GEORGE LEVENTHAL: Where does that stand?
11 MICHAEL KNAPP: The committee had work session last week.
12 And made recommendations, we had a couple of things that were still being rectified, if I
13 remember it correctly.
14 Mr. Zyontz, where did we get to on--do you remember on?
15 JEFF ZYONTZ: I was not part of the MPDU conversation, but you were still looking at
16 some text that was coming back to your commission.
17 MICHAEL KNAPP: Not--so, we did.
18 Okay.
19 So, there were a couple of options presented to us by council staff that the committee
20 wanted further information on as to how to implement them and they were going back with
21 DHCA to actually give us some language we could look at.
22 So, it is my hope that we will get that back.
23 And I think we're scheduled to back the first week in November.
24 GEORGE LEVENTHAL: Can I just get a refresher very briefly from the staff on what role
25 the Alternative Review Committee plays now and what is going to changing, if that's all
26 right?
27 JEFF ZYONTZ: Yes, legislatively, there was a determination made by the Alternative
28 Review Committee on whether it was feasible or not to provide MPDUs without height or
29 density exceptions from the master plan.
30 If they found it not feasible to provide MPDU's within the height and density guidelines,
31 they would allow a ...
32 GEORGE LEVENTHAL: A buyout.
33 JEFF ZYONTZ: No, they would allow those heights and densities to be exceeded.
34 This is within zoning now within the buyout so...
35 And once they made that determination, that was binding both on the hearing examiner
36 for Development Plan Amendments, and Park and Planning for project on approvals.
37 MICHAEL KNAPP: And so, the effect this SRA is what?
38 JEFF ZYONTZ: It's just taking the ARC out of that determination, allowing the Planning
39 Board discretion to approve development above the master plan limit.
40 GEORGE LEVENTHAL: And this was requested by the County Executive, why?
41 I'm just trying to refresh my memory.



October 21, 2008

1 JEFF ZYONTZ: Right.
2 This was requested because of the problems with ARC dealing with proprietary
3 information in closed session.
4 So, they determined financial feasibility based on the performers that they could not share
5 in a public setting then came out into a public setting where decisions had to be made on
6 the record, where they could not be cross-examined.
7 It was a fait accompli.
8 GEORGE LEVENTHAL: Mr. President, could I request Mr. Nelson who has just come in to
9 explain why this is a good idea?
10 I'm not opposed to it.
11 I'm just trying to understand it before I vote so-- MICHAEL KNAPP: Mr. Nelson, please
12 join us.
13 Your timing was impeccable.
14 RICHARD NELSON: I wasn't present, obviously, for the committee discussion so...
15 MICHAEL KNAPP: Sure, understood.
16 There's no problem.
17 RICHARD NELSON: Thank you.
18 I'm Richard Nelson, Director of House and Community Affairs.
19 Oh, by the way, one, one slight modification to the conversation you just had--the decision
20 of the ARC is not binding.
21 We did some recommendation to the planning where the Planning Board can, in fact, not
22 follow it.
23 That was my impression JEFF ZYONTZ: It's been treated as irrefutable.
24 MICHAEL KNAPP: Hold on.
25 It would say that, just even in the front page of the memo, it would appear as though that
26 the ARC has the authority, not that it's an advisory role so we need to--we should clarify
27 that.
28 JEFF ZYONTZ: If the majority of the ARC finds a development that includes quotes
29 including bonus, it would not be financed at least within the height limits...
30 RICHARD NELSON: The ARC makes some recommendation to the Planning Board as to
31 whether a development project that includes MPDU should be allowed to exceed master
32 or sector plan height, and/or density limits based on the determination of the land's
33 usability.
34 My understanding is that that it is a recommendation.
35 JEFF ZYONTZ: Yes, the Planning Board still has authority for other reasons like
36 compatibility if they still found that the height and density a problem to deny but they
37 couldn't deny it on the basis of master plan conformance.
38 GEORGE LEVENTHAL: They couldn't deny the ARC recommendation to exceed the
39 height limit?
40 JEFF ZYONTZ: Essentially, yes.
41 CHRIS ANDERSON: If I may, my understanding is--I am sorry.



October 21, 2008

1 I'm Chris Anderson from DHCA.
2 And my understanding is that ARC and the ARC understood its functions as merely
3 making a recommendation to the Planning Board.
4 And the Planning Board then had several options available to it including waiving the
5 height and density limits but also waiving open space or public amenities.
6 So, the Planning Board had several options to it but waiving height was just one of several
7 options.
8 GEORGE LEVENTHAL: And does the Planning Board still have those options even if we
9 enact SRA 08-02 and ZTA 08-07?
10 JEFF ZYONTZ: Yes, they have that authority without any action by the ARC and the fact
11 is the SRA and ZTA would eliminate the mention of the ARC committee from the zoning
12 ordinance and the subdivision.
13 GEORGE LEVENTHAL: But does that not enact in these two measures?
14 Does that not eliminate DHCA from that determination?
15 The DHCA was part of the ARC, right.
16 JEFF ZYONTZ: Yeah, now, they would not have roles.
17 GEORGE LEVENTHAL: Have no role whatsoever?
18 JEFF ZYONTZ: Correct.
19 GEORGE LEVENTHAL: So, in so far as the determination of whether it is in the public
20 interest to provide MPD use, even if that means taking a different look at language in a
21 master plan regarding height and density, now, that will be purely up to the Planning
22 Board and DHCA will no longer have a role?
23 Am I incorrect?
24 Am I right or wrong?
25 JEFF ZYONTZ: You are correct.
26 GEORGE LEVENTHAL: But DHCA supports that?
27 RICHARD L. NELSON: The DHCA could still make a recommendation.
28 Let me suggest, to answer your question, give you the information that we've provided
29 earlier because the ARC must determine whether development projects are financially
30 feasible.
31 The ARC needs to review information that is proprietary in nature and it cannot be
32 disclosed to the public.
33 This requirement does not allow for an open and transparent decision process, a concern
34 that was raised by OLO in the Office of the Legislative Oversight in its report last year on
35 the MPDU Program.
36 There is no mechanism that permits the public to question or challenge the information
37 provided.
38 Financial feasibility is a concept that is difficult to define.
39 Furthermore, the financial feasibility is determined by many market factors and public
40 mandates, not just the requirement to provide MPDUs.



October 21, 2008

1 The ARC bases its review on information that is provided by the developer several years
2 in advance of actual construction.
3 It does the long-term accuracy of its information.
4 It's difficult to determine as market conditions change.
5 Eliminating the ARC would help to expedite the development reviews for projects that
6 include affordable housing, as recommended in the Affordable Housing Task Force report.
7 And specifically, in reference to your question and the implication that possibly the
8 Executive Branch is considering not having a role in that, I think DHCA does in fact review
9 plans.
10 We make recommendations.
11 We've been very active in the DRC consideration of developer proposals and, in fact,
12 make recommendations which the Planning Board has in fact taken into consideration.
13 We think that is the appropriate vehicle for us to express our opinion on those projects.
14 GEORGE LEVENTHAL: So the County Executive requested both of these measures?
15 RICHARD L. NELSON: Yes.
16 GEORGE LEVENTHAL: Both of these ATA and the SRA?
17 RICHARD L. NELSON: Yes, that is correct.
18 GEORGE LEVENTHAL: And isn't it the executive's branch belief that enactment of these
19 two measures will not restrict in future the likelihood of constructing MPDU'S?
20 RICHARD L. NELSON: It's the Executive's opinion that it will not further restrict the
21 construction of MPDUs.
22 That is correct.
23 GEORGE LEVENTHAL: And DHCA will continue to monitor new developments to make
24 sure that MPDU requirements are adhered to?
25 RICHARD L. NELSON: Absolutely and I encourage the development of MPDUs.
26 GEORGE LEVENTHAL: And if at some point there maybe be a need for ten extra feet or
27 something to make the accommodation with more MPDUS?
28 RICHARD L. NELSON: We will-- GEORGE LEVENTHAL: Hypothetically DHCA might
29 weigh in on that regard?
30 RICHARD L. NELSON: We would in fact weigh in on that and make a recommendation to
31 most likely support the increase height for indoor density to accommodate MPDUs.
32 GEORGE LEVENTHAL: Okay, I appreciate the interest to my question.
33 Greg, I know you're here representing a big organization and you may not be able to
34 predict what that organization will do.
35 It is my hope that along with the goals of the aesthetic goals that we've heard recently
36 articulated by the Planning Board as top on its priority list, that continued provision of
37 affordable housing will also be a priority now and in the future for the Planning Board.
38 I have to say, I haven't heard that recently from the Planning Board.
39 It once was a top priority and I would have to say it hasn't been...
40 And I haven't heard it articulated by the Planning Board in the last few years so it would
41 be--and we have many goals.



October 21, 2008

1 We're trying to maintain our quality of life.
2 We're trying to plan for the future.
3 We're trying to maintain a desirable community but providing affordable housing is among
4 those goals and it would be my hope that that would be a priority for the Planning Board.
5 GREG RUSS: For the record, Greg Russ, for the Planning Board.
6 It is a major goal of the Planning Board to adhere to the affordable housing of our
7 residents here.
8 As Rick mentioned, as part of the review of any case, DHCA would be involved in the
9 process.
10 We would take into consideration their views as well as what we use right now in terms of
11 development plans and project plans in terms of findings to tie those to the surrounding
12 areas in terms of the heights and making sure that we mitigate any measures associated
13 with additional height, etcetera.
14 So, I think by taking out the ARC, we take out the ambiguity of the financial side of it and
15 tie it strictly to land use and county policy goals.
16 GEORGE LEVENTHAL: Okay, last question, Mr. Zyontz.
17 Was I wrong in remembering that the ARC was also involved in the determination of
18 whether a buyout would be authorized?
19 Wasn't it the ARC?
20 JEFF ZYONTZ: You are correct.
21 GEORGE LEVENTHAL: That reviewed those criteria of the condo fees and the
22 environmental sensitivity that were in the old law or that are still in the law, I guess that
23 we're working to repeal now?
24 JEFF ZYONTZ: You are correct.
25 The differences with what's before you has nothing to do with any of that.
26 GEORGE LEVENTHAL: So the ARC had other functions as well?
27 JEFF ZYONTZ: Yes.
28 GEORGE LEVENTHAL: Are there any functions it has that it approves buyout...?
29 It allows density and height in certain circumstances.
30 Does the ARC have any other functions that are now are now going to go away if we
31 enact these measures?
32 JEFF ZYONTZ: Well, again, if you enact these measures, the only thing that goes away is
33 the role in subdivision and zoning approvals.
34 They still have the buyout until you act on that.
35 GEORGE LEVENTHAL: All my questions have been answered.
36 Thank you, Mr. President.
37 MICHAEL KNAPP: Okay, then I would just follow up on your comment that we are in fact
38 meeting with the Planning Board at 1 o'clock this afternoon to raise that issue as it relates
39 to affordable housing to make sure that, you know, in the semi-annual report, that they,
40 that point has been impressed upon them.
41 GEORGE LEVENTHAL: But we won't on television then.



October 21, 2008

1 MICHAEL KNAPP: Although we are recording it for posterity for those who want to come
2 in, who want to come in and view it.
3 Councilmember Elrich...?
4 MARC ELRICH: How many ARC cases have there been?
5 CHRIS ANDERSON: 8.
6 MARC ELRICH: Over how many years?
7 CHRIS ANDERSON: About a year and months.
8 MARC ELRICH: How many other projects have gone forward outside the ARC or how
9 many other--well, is everything going through the ARC or are things that?
10 Do you have a sense of balance between what's going through the ARC and what's not
11 going through the ARC?
12 JEFF ZYONTZ: I would say the vast majority do not go through the ARC.
13 CHRIS ANDERSON: Yeah.
14 But I don't have numbers.
15 MARC ELRICH: So the need for this exception is occasional rather than normal?
16 JEFF ZYONTZ: Yes.
17 MARC ELRICH: So, what we're creating, a situation where this becomes normal?
18 Basically, the granting of additional density becomes normal as opposed to exceptional
19 based on need?
20 GREG RUSS: I don't think we can say that.
21 I think on an individual basis, I mean, again, we look at this thing holistically and we just
22 have to look at it case by case.
23 I couldn't take it to that level.
24 And again, we are dealing with a number of different findings from the development plan
25 and project plan and subdivision regulation standpoint to review these things.
26 So, I'm just not sure that we could take it that far yet.
27 JEFF ZYONTZ: And the one thing I'll say is this is limited to higher density development.
28 MAC ELRICH: CPD...
29 JEFF ZYONTZ: Well, 40 units per acre or more.
30 MARC ELRICH: Which is zone is that?
31 JEFF ZYONTZ: RHCPD1, CBD2, CBD3, the higher PD zones above 44.
32 It's a relatively high density situation that you're dealing with it which hasn't been the
33 typical application.
34 Most applications are for much lower densities.
35 MARC ELRICH: But are they for lower densities because they're coming within the master
36 plan heights?
37 JEFF ZYONTZ: No, they're lower densities because of the zone that they're in.
38 MARC ELRICH: Well, I guess, I'm looking at the--there was a table included that shows
39 differences between a master plan heights and zones.
40 I think that's what the--well, somebody's testimony.
41 Maybe, I'm misreading what the paper was trying to tell me...



October 21, 2008

1 JEFF ZYONTZ: Circle 18?
2 MARC ELRICH: Yeah.
3 MICHAEL KNAPP: On the second, the next packet, isn't it?
4 JEFF ZYONTZ: Yeah, on the next packet.
5 MICHAEL KNAPP: I was following along on Packet 5, Circle 18.
6 MARC ELRICH: I mean I guess I'm concerned because I think some of the changes are
7 large, potentially large...
8 And that's it--you know, we go through this master plan process and then basically we're
9 telling people the master plan doesn't count and we're also, it seems to be we're saying
10 that we're not going to provide any affordable housing within master plan heights.
11 You know, if there's no density bonus, you know, why would you expect to get any
12 affordable housing?
13 And it seems to me, we should have constructed our zones so that the affordable housing
14 is part of what you get within a master plan height.
15 JEFF ZYONTZ: And certainly, the newer master plan, you'll find that it has a height and
16 density with and without MPDUs.
17 And, you know, so it's the older ones that this is more applying to.
18 MARC ELRICH: So, what, does it make sense to go back and do these as master plans
19 so that there's--the with and without community, by community, with community
20 discussion as opposed to this blanket approach?
21 JEFF ZYONTZ: In a perfect world with unlimited resources, it would be great.
22 MARC ELRICH: You are saying this is an imperfect world?
23 MICHAEL KNAPP: Well, let's see.
24 Are all the reporters on the back...?
25 We are in fact living in an imperfect world.
26 MARC ELRICH: You could send the market crashing.
27 All in favor of a perfect world.
28 MARC ELRICH: Even George would go along with the perfect world today.
29 I guess I struggle with letting people override the master plans and I think that the
30 appropriate mechanism for doing this is to go back into the master plans rather than to
31 use what I think is a very, very blunt tool and I'm not sure how Park and Planning is going
32 to, with this language, exercise any discretion on the end.
33 This has become the by-right bottom line that you get to do this no matter what.
34 GREG RUSS: No, I don't believe that's the case.
35 We've always looked at this thing holistically even before these regulations went into play.
36 I guess that's probably 2004-2005 when this occurred.
37 So, in the case where you would go beyond the master plan in terms of height, but not
38 beyond what the zone has in terms of densities, obviously, taken into account now is work
39 force housing as well as the MPDUs.
40 We still, you know, would limit that only to what's necessary for the MPDUs or work force
41 housing; but still looking at what's surrounding the properties; i.e., trying to limit these



October 21, 2008

1 heights closer to the core of the areas and tapering down closer to the single-family
2 residential neighborhoods to create a compatibility that's necessary to mitigate any of
3 these measures so I mean going beyond the heights of the master plan, yes, but still
4 maintaining the integrity of the master plans, so...

5 MARC ELRICH: Do you think you have enough language in here?

6 GREG RUSS: I think we have enough language in here along with the language that we
7 already have in place in the development plan findings and standards as well as what the
8 project plan language findings and basis of consideration language in the zoning
9 ordinance.

10 Yes, I do.

11 MARC ELRICH: So, when we're talking about doing Twinbrook in White Flint, what's going
12 to be sitting in there?

13 Separate language for MPDUs?

14 GREG RUSS: Yes.

15 JEFF ZYONTZ: Yes, yes.

16 GREG RUSS: You will see a density without MPDUS and a density with MPDU bonuses
17 and work force housing.

18 MARC ELRICH: And how many different districts do we have to go back through if we
19 were going to review that?

20 How many places have that kind of distinction now and how many downtowns have that
21 distinction now?

22 Big ones?

23 GREG RUSS: Yeah, well, you see, Potomac came in 2002.

24 Yeah, I would say the majority does not have this language in it and that's really why we
25 needed to have this language in here so that we could have another tool to address our
26 affordable housing goals; but must don't have it.

27 But I mean we're just plugging along on these master plans as you know now and all the
28 future plans will have it.

29 That's pretty much as far as I can take it, you know.

30 MARC ELRICH: So, it's the Planning Staff's recommendation or Planning Board's
31 recommendation not to exceed the height scheme from where?

32 I think--I mean that was their difference of opinion was kill the ARC but don't...

33 GREG RUSS: Yes, the Planning Board's recommendation was to get rid of the ARC but to
34 deal this either comprehensively in the zoning ordinance, rewrite project or the general
35 plan.

36 It's where the Planning Board--the Planning Board staff believes that this could work at
37 least in the interim until we get to something more comprehensive.

38 JEFF ZYONTZ: You know if I can quote the Planning Board recommendation.

39 Although the Board strongly supports policies that promote MPDUs, we believe a more
40 comprehensive bulk of this issue through the zoning ordinance rewrite or an amendment
41 to the housing element of the general plan is needed.



October 21, 2008

1 I'll comment to you that this zoning ordinance rewrite will be before the next council in
2 2011.
3 NANCY FLOREEN: The next council?
4 GEORGE LEVENTHAL: In a perfect world.
5 MARC ELRICH: Or perhaps an imperfect if you look it that way.
6 MICHAEL KNAPP: Okay, Councilmember Floreen?
7 NANCY FLOREEN: Thank you.
8 Well, I just wanted to comment a little bit on the history of all this when we worked on
9 this...
10 Was it four years ago?
11 Something like that.
12 MICHAEL KNAPP: Yes.
13 NANCY FLOREEN: One of the major issues that affordable housing advocates told us
14 was a constraint where what they felt were unreasonable height limits in some locations
15 and one of the challenges was what that this was also driving buyout requests because of
16 the need to--the desire to provide this housing and satisfy that obligation on site.
17 There are all these different issues associated with height particularly in the CBDs but this
18 was identified as one of them.
19 And so, that's why this was advanced in the first place to allow some flexibility.
20 But I think it's really important to emphasize what we heard back several years ago
21 situations where there were a number of affordable units that were not produced, could
22 not be approved where they're just talking about a couple of feet.
23 It wasn't you know a 20, 50 foot distinction.
24 It was a very modest constraint that the Planning Board felt limited by.
25 And so, there was general concern that this would be a tool, as with many other tools that
26 we've added to make it possible for us to reach that point of a balancing to achieve what I
27 think most people agree is a desire to achieve more affordable units on the ground and in
28 the places where they are intended to be located.
29 But it's not controlling.
30 You know, as STAP emphasized the conversations about neighborhood compatibility and
31 relationship still remained paramount and will continue as whatever projects do proceed,
32 do proceed.
33 So, I think it's important to realize this does not change really anything.
34 What it does is it takes out a level of analysis because back then, there was concern
35 about, well, with these you know valid issues as to feasibility of producing these units on
36 site and was it really warranted under the circumstances?
37 And I think the experts have concluded that that process that was added four years ago
38 really hasn't helped a lot and has created more confusion for the community than folks
39 would have liked to have seen.
40 So, that's pretty much, I guess, why we're here on this subject and I'm glad that the
41 County Executive has advanced this.



October 21, 2008

1 MICHAEL KNAPP: Councilmember Berliner?

2 ROGER BERLINER: I strongly support this agenda item.

3 I do think the ARC has been a flawed process, and I think it's time to say goodbye to it.

4 And I appreciate that under the measure that we are passing, we will retain authority in
5 the Planning Board to accommodate additional density where it sees that it is compatible
6 with surrounding community and an appropriate public policy to be approached in that
7 manner.

8 I do find it interesting that Planning Board and Planning Staff had a slightly different view
9 with respect to this matter and if the Planning Board did request that we eliminate their
10 discretion, as I appreciate it to approve additional density where they find it warranted and
11 not inconsistent with the compatibility of the existing neighborhood.

12 The suggestion that we should wait until the zoning ordinance is rewritten, I think my
13 colleagues and I look at that and say that that's just simply a nonstarter.

14 We cannot wait for that time.

15 Now, I, for one, should I be here at the time that that is done, am happy to look at this
16 particular policy in light of a comprehensive rewrite and determine whether or not we still
17 need this particular mechanism.

18 But until we have that rewrite, we would leave a void that I don't find that serves our
19 community at this moment in time when affordable housing is so important.

20 So, and I'm comforted by the fact that the Planning Board, should it determine that this
21 would be an egregious abuse of the master plan process in terms of a particular proposal,
22 can say no.

23 So, the Planning Board retains its authority and we still have a policy that allows for
24 MPDUs where they're warranted even if it requires additional density and exceeding that
25 which was otherwise provided for in the master plan.

26 So, I think it's a fair balance.

27 And probably not ideal, one that could be improved upon by a rewrite and we look forward
28 to that rewrite.

29 And when it comes, we can come back and look at this issue.

30 MICHAEL KNAPP: Councilmember Leventhal?

31 GEORGE LEVENTHAL: I'd like to understand a little bit of the universe of future projects
32 that we might be talking about.

33 Presumably, we're talking about--the law is the law.

34 If you got 20 units or more, you got to set aside 12.5% as MPDUs.

35 So, there's no discretion there.

36 That's the law.

37 And once we eliminate the buy-out provision, which I've been advocating for several
38 years, there will really be no discretion at all.

39 I understand the transparency argument.

40 I recollect that there've been concerns about, you know, information being--ARC decisions
41 being based on information that wasn't available to the public and I grasp that.



October 21, 2008

1 But let me just see if I'm correct here.
2 The only types of projects that we're talking about are either projects of less than 20 units
3 that will provide MPDU's anyway or projects that will provide more than 12.5% MPDU's.
4 Is that correct?
5 The developer will come to the Planning Board and say, "We're going to do more than our
6 share, more than required under the law.
7 And now we request that you give us little extra height or a little density." Am I right?
8 Because we're not talking about doing an end-run around the law.
9 The law is the law.
10 Am I right?
11 JEFF ZYONTZ: Yes, but it's also a limited set of those that this only applies if it's more
12 than 40 units per acre so you're talking about high-rise situations.
13 GEORGE LEVENTHAL: Okay.
14 Okay.
15 But here, again, the developer would be requesting extra density, extra height in order to
16 provide more units over and above the baseline requirement of the law, right?
17 Because the law is the law.
18 It's not--the developer has to provide 12.5% within the master plan in order to get
19 approved.
20 JEFF ZYONTZ: Well, but they could provide the 12.5% over plus the density bonus so
21 that 12.5% could cause them to go over as well.
22 And again, the straight tax reads however the construction of all MPDUs under 25a
23 including any bonus units or densities--so it's not just for bonus units or densities, it's for
24 the base as well.
25 But again, it's a narrow set of high-rise developments.
26 For the 12.5% base that you're providing, that you must provide, you might get...
27 GEORGE LEVENTHAL: Bonus density.
28 JEFF ZYONTZ: You might get height, right.
29 GEORGE LEVENTHAL: But that's the law today.
30 JEFF ZYONTZ: Yes.
31 GEORGE LEVENTHAL: And this doesn't change that.
32 It just places the decision in the hands of the Planning Board rather than in the hands of
33 the Alternative Review Committee.
34 JEFF ZYONTZ: Right.
35 Yeah.
36 Right.
37 GEORGE LEVENTHAL: Okay.
38 Well, I thought I was copasetic until this discussion that said the Planning Board would
39 rather defer all this until some happy future date when we remake the world and we have
40 a beautiful streamlined Zoning Code that never again raises any questions or confusion



October 21, 2008

1 and we'll all look forward with anticipation to that day, but I think it's some distance in the
2 future.
3 And again, I guess, my question is what is the Planning Board's priorities?
4 What is important to the Planning Board?
5 And the answer, maybe, it's a balancing act.
6 Master plans are important.
7 Honoring commitments made to the public are important.
8 Providing affordable housing is important.
9 Greg Russ: I think you hit it right on the head, it is a balancing act from the Planning
10 Board's perspective.
11 I mean, obviously, the Board would like to look at this more comprehensively, but we also
12 understand that, you know, houses are still built although right now it's questionable.
13 So, there needs to be something in place for that and I think the Planning Board staff
14 looked at it from that perspective to have something in place.
15 Until the comprehensive overall look either from the zoning ordinance or a general plan
16 standpoint is done, then this would be the approach we would take.
17 And that's how the staff looked at it.
18 GEORGE LEVENTHAL: That's what the law says.
19 Greg Russ: Yeah.
20 GEORGE LEVENTHAL: So you follow what the law has written now.
21 Greg Russ: Yes.
22 GEORGE LEVENTHAL: Not decline to take advantage of a provision which might provide
23 more affordable housing merely because we don't yet have the new general plan or the
24 new zoning code because it's going to be a while before we got those things.
25 Greg Russ: I understand, yes.
26 GEORGE LEVENTHAL: All right.
27 Well, I'm going to take it on faith that the PHED committee kick these issues around in
28 some depth and its recommendation ought to be respected, and I'll vote for this.
29 MIKE KNAPP: Thank you, Councilmember Leventhal.
30 Councilmember Elrich?
31 MARC ELRICH: When did you get the height zoning with the standard MPDUs?
32 When does 12.5% force you to go over any height limit?
33 You know, if I have a 60-foot height limit or a 90-foot height limit and 12.5% of the units
34 have to be MPDUs, why would height be an issue?
35 Why should you have to go above--?
36 GREG RUSS: Well, going beyond the master plan as opposed to the zone, I mean...
37 MARC ELRICH: Will that be on that?
38 Yeah?
39 GREG RUSS: Yeah.
40 Case by case basis.
41 I mean it's really depending on the size of the lot.



October 21, 2008

1 You may have a very, very narrow piece of property where it's marginal in terms of height,
2 most of your MPR is going in height as opposed to being spread out where it's marginal
3 just to get your 12.5%.

4 And that's when this really comes into play.

5 Again, these are in those areas where densities are much higher.

6 That's where your issue comes into play as well as dealing with the whole issue of condo
7 fees and all those.

8 I mean developers are dealing with--I'm sure they're pulling in the financial issues related
9 to actually constructing something that's feasible for them.

10 So from a land use standpoint, we understand that properties that are of different sizes
11 and different dimensions and height in these higher density areas can be marginal when it
12 comes down to actually getting the density necessary or the density that even the master
13 plans allows.

14 So, you just do run into marginal situations.

15 Although they may be rare right now, but, I mean we still need to be able to provide the
16 opportunity to provide what the policy is talking about in terms of providing affordable
17 housing.

18 MARC ELRICH: I guess I have a hard time seeing why within any height limit, you can't
19 get 12.5% MPDUs just because the law says that 12.5% which means 5 out of every 40
20 have to be affordable.

21 Why does that get into any issues of height or anything else?

22 JEFF ZYONTZ: Well, number one, it's complicated by the fact that you have both FAR
23 limits sometimes and dwelling unit limits another time.

24 The other--aside from the shape of the parcel that might affect height because of the
25 floorage you need, the other aspect would be what's your market.

26 How big are the apartments other than MPDUs?

27 And the FAR use for the market rate apartments can be substantial and increased height.

28 MARC ELRICH: Do you wind up rewarding people with extra height because they built
29 exceptionally large units for extraordinarily wealthy clientele?

30 I mean, if I build 1,500-square-foot apartments and I eat up all my height doing that, then,
31 you know, I'm the victim and I'm forced to exceed the height limits because of the size of
32 the units I built?

33 GREG RUSS: Well, I think it's part of the review process in Park and Planning.

34 From a land use perspective, we would look at this height based on what's going on
35 around it as

36
37
38 well.

39 We just won't blanket and give some one height.

40 I mean, if we see that there are ways--we may have to reduce some of the density of the
41 site period so that the 12.5% can be done within the height limits that are there right now.



October 21, 2008

1 So, it's just not an automatic.
2 I mean we have to look at this thing comprehensively when we go through the entire
3 review process.
4 So, don't look at it as an automatic because nothing is automatic when we go through the
5 review process.
6 And just to follow up on another question that you were saying about citizens being
7 involved in the process, all of these cases, generally, in this higher density, go through
8 some type of public hearing process and we can address some of these things with
9 citizens.
10 So we wouldn't necessarily have the kind of review you have in a master plan process, but
11 you do have some opportunity to discuss these issues with the general public as well.
12 MARC ELRICH: But what's the density bonus for going to 15%?
13 GREGG RUSS: Say again?
14 MARC ELRICH: What's the density bonus for going to 15%?
15 GREG RUSS: Twenty-two.
16 MARC ELRICH: So, if I had a 100-unit project, I do 13 MPDUs, which is 12.5% rounded
17 up, right?
18 And I get no density bonus.
19 MPDU come from out of units, right?
20 GREG RUSS: Right.
21 MARC ELRICH: If I do 15 units, I do two more units, I get a 22% density bonus.
22 That's right?
23 GREG RUSS: Yeah.
24 I mean...
25 MARC ELRICH: It just seems excessive for two units.
26 JEFF ZYONTZ: At 13.5%, you break even, you have as much density bonus as you have
27 MPDU.
28 And above that, you get more market units essentially.
29 MARC ELRICH: And how do we get the 22% for traditional use?
30 JEFF ZYONTZ: That was a determination made a long time ago with a Chairman
31 Kristeller who wanted to get more than the 12.5% MPDUs.
32 MARC ELRICH: It seems to me you're dealing with small numbers of increases in units
33 and large density bonuses.
34 I mean you don't get much bang for what you give away.
35 JEFF ZYONTZ: And that's something you can address more generally with the MPDU.
36 MICHAEL KNAPP: Now, I've got something to ask.
37 I feel that's something we can come back and address, but that's the current construct of
38 the law which predated any of us here.
39 And we could certainly come back and revisit then.
40 In fact, we're having a series of discussions on the MPDU laws as this we spent time out
41 the other day.



October 21, 2008

1 So, if that's an issue, we could probably address it further in that capacity.
2 Okay?
3 Okay.
4 Further discussion?
5 I see none.
6 Madam Clerk, if you would call the roll?
7 Subdivision Regulation 08-02...
8 JEFF ZYONTZ: Do you need a motion to...?
9 MICHAEL KNAPP: It's the committee's recommendation.
10 JEFF ZYONTZ: Okay.
11 The clerk spanked my hand last time for not having a motion in.
12 GEORGE LEVENTHAL: If the committee has recommended it to the full Council, that is a
13 motion.
14 MARC ELRICH: That is the motion, okay.
15 MICHAEL KNAPP: She may have slapped your hand, it may have been for something
16 else but I can't speak on that one.
17 I'm just saying, I don't know.
18 I don't know what he's doing to get his hand slapped.
19 Madam Clerk, can you please call the roll?
20 CLERK: Mr. Elrich?
21 MARC ELRICH: Yes.
22 CLERK: Mr. Praisner?
23 DON PRAISNER: Yes.
24 CLERK: Ms. Trachtenberg?
25 DUCHY TRACHTENBERG: Yes.
26 CLERK: Ms. Floreen?
27 NANCY FLOREEN: Yes.
28 CLERK: Mr. Leventhal?
29 GEORGE LEVENTHAL: Yes.
30 CLERK: Ms. Ervin?
31 VALERIE ERVIN: Yes.
32 CLERK: Mr. Berliner?
33 ROGER BERLINER: Yes.
34 CLERK: Mr. Andrews?
35 PHIL ANDREWS: Yes.
36 CLERK: Mr. Knapp?
37 MICHAEL KNAPP: Yes.
38 SRA 08-02 passes unanimously.
39 We now turn to action on ZTA 08-07, Alternative Review Committee functions which
40 accompanies the SRA.
41 Is there a discussion?



October 21, 2008

1 We have a committee--I'm sorry, PHED recommends approval of this as well.
2 JEFF ZYONTZ: The only slight complication and the slight difference is there are changes
3 to the law in the prior week how to adjust this so that the outline fit with the two exceptions
4 you now have to the master plan conformance.
5 MICHAEL KNAPP: Okay.
6 I see no further discussion.
7 Madam Clerk, if you'll call the roll.
8 CLERK: Mr. Elrich?
9 MARC ELRICH: No.
10 CLERK: Mr. Praisner?
11 DON PRAISNER: No.
12 CLERK: Ms. Trachtenberg?
13 DUCHY TRACHTENBERG: Yes.
14 CLERK: Mrs. Floreen?
15 NANCY FLOREEN: Yes.
16 CLERK: Mr. Leventhal?
17 GEORGE LEVENTHAL: Yes.
18 CLERK: Ms. Ervin?
19 VALERIE ERVIN: Yes.
20 CLERK: Mr. Berliner?
21 ROGER BERLINER: Yes.
22 CLERK: Mr. Andrews?
23 PHIL ANDREWS: Yes.
24 CLERK: Mr. Knapp?
25 MICHAEL KANPP: Yes.
26 ZTA 08-07 passes 7 to 2.
27 Thank you very much.
28 We now turn to Legislative Session day number 34.
29 Madam Clerk, is there a journal for approval?
30 Okay.
31 There are no bills introduced.
32 We call the bills for final reading, Expedited Bill 30-08 Taxicabs Licensing.
33 The T&E Committee recommends approval with amendments.
34 I turn to the Chair of the Transportation, Infrastructure, Energy and Environment
35 Committee, Councilmember Nancy Floreen.
36 NANCY FLOREEN: Thank you very much, Mr. President.
37 T&E committee had a very interesting and extensive conversation on Expedited Bill 30-08
38 which is intended to make some adjustments in the Taxicab Regulatory Environment due
39 to some pending legal action that we expect will have some implications for our current
40 fleet owners.



October 21, 2008

1 The committee recommends approval of what the County Executive has sent over with
2 three amendments.

3 One--and I'm not sure how much detail the Council would like us to go into.

4 It's an interesting regulatory environment.

5 I will say, number one, there were some issues that the committee has considered and
6 worried about with respect to the structure of the operations of the Taxi Regulatory Model
7 altogether.

8 And after some conversation, we determined to put that on hold and see how this coming
9 year proceeds.

10 So, although some questions were raised about whether this is the best way to operate, I
11 think our collective concurrence was we're not going to take that up at this time given the
12 issues that the County Executive wished us to press on.

13 MICHAEL KNAPP: Madam Chair, do you want to take questions on item by item or do
14 you want to wait until you get through the report?

15 NANCY FLOREEN: We can talk as we go through it and, frankly, I was just going to
16 summarize and let Mr. Faden...

17 MIKE KNAPP: Okay.

18 NANCY FLOREEN: Review the bidding and respond to questions.

19 There are three committee recommendations, basically.

20 One is on page four which provides that the waiver authority that is provided in this bill
21 which allows the director to waive some of the license requirements will sunset in a year
22 and that will allow us to assess the effectiveness of the choices that the department has
23 made and understand the regulatory environment after any changes occur.

24 We've made some--the Committee supports the council's staff recommendations that are
25 identified on page five which address some conditions as to where a waiver of our license
26 restrictions may occur.

27 And we also concur with our final language that's shown at the top of page seven that
28 basically allowed the director to waive limits on transferring taxi licenses that are issued to
29 a fleet under certain conditions and we'll make it very clear.

30 We are very concerned that there be fairness in this process.

31 We heard a lot from the independent operators as to their need to be considered equal
32 players in the environment that we're anticipating and this provides basically for very
33 considerable parity of treatment of the other players within the taxicab industry.

34 So, that's a very big summary and then I'm going to turn it over to Mr. Holmes and Mr.
35 Faden to outline the County Executive's objectives and solutions we worked with that.
36 Mr. Holmes, would you like to say anything?

37 ARTHUR HOLMES, JR.: He'll go through the stack first and we will then answer your
38 questions.

39 MICHAEL FADEN: Very briefly, as Chairman Floreen noted the purpose of this bill, which
40 was introduced on behalf of the County Executive, is to allow the DOT director to waive a
41 couple of restrictions on transfer of existing taxicab licenses that are in the current law--



October 21, 2008

1 mainly, the restriction that a fleet can not transfer more than two licenses a year to an
2 individual.

3 The purpose of that is to allow fleets and one large fleet in particular to be able to sell
4 licenses to drivers and thereby earn what's needed to get out of bankruptcy.

5 The committee approved this or recommended approval with several amendments which
6 Ms. Floreen noted.

7 We can go through those, if you like.

8 They're all in the packet.

9 The first one on page four of the staff memo is the sunset provision which puts in
10 December 31, 2009 as expiration for the waiver authority.

11 What that means is that the director can approve waivers up to that point.

12 They need not be completed.

13 So, he could say, okay--the company can sell up to x amount of licenses to drivers.

14 The licenses don't need to be sold by December 31, but the waiver authority would expire
15 at that point.

16 MICHAEL KNAPP: Questions on, Mr. Berliner, on that point or is it general?

17 MIKE KNAPP: The only question I would have there--so if there is a process in place even
18 though all of the licenses may not have been transferred by...

19 MICHAEL FADEN: Right.

20 MIKE KNAPP: December 31st, 2009.

21 As long as that process is in place, then whatever remains to be transferred can continue
22 under the auspices of this legislation.

23 MICHAEL FADEN: Yes, there is already in the current law a process for license transfers.

24 There are just the numerical restrictions which this bill would allow the director to waive.

25 The second set of amendments is on--in the middle of circle five.

26 This was a language actually developed by staff working with the Executive Branch staff
27 and various stakeholders since the committee meeting last week to bring some detail to
28 the conditions, the kind of conditions that the director can attach to any waiver or
29 approval.

30 Let me mention particularly the first one requirement for purchase of liability insurance.

31 That is intended to let the director require that the buyer of the transferee of these licenses
32 to have liability insurance before--when the license is transferred, it doesn't apply to the
33 seller of the license.

34 I just want to make that clear because there has been some question about that.

35 The other two requirements that are specified, which are part of the director's general
36 authority to attach conditions to these waivers are maintenance of minimum numbers of
37 accessible vehicles which is an issue raised by advocates for disabled drivers and limit
38 some of the number of new licenses the company can apply for after a transfer of existing
39 licenses.

40 That is intended to let the director restrict what has been called flipping of licenses.

41 In other words, a company would transfer old licenses.



October 21, 2008

1 At the same time, it gets new licenses.
2 That is a practice the committee did not favor.
3 MICHAEL KNAPP: And we think this legislation precludes that from being able to happen.
4 MICHAEL FADEN: We think the director can attach and is directed to attach conditions to
5 prevent that from happening.
6 And finally, the language ultimately worked out on the top of page seven of the staff memo
7 on what's been called the parity issue which is the ability and right of other companies to
8 be able to obtain waivers and sell licenses when the dominant company gets its waivers
9 approved.
10 The formula, which is a minimum formula in here; the director can allow more transfers.
11 And the minimum is a market share formula which the staff basically box the math up in
12 the example but the principle is clear to everyone.
13 The principle is that when a company receives approval, receives a waiver to allow actual
14 transfers, the other companies
15
16
17 would be able to get the same number of transfers as their market share when the waiver
18 request is filed.
19 The current market shares are listed in the packet.
20 They are correct.
21 Barwood has--well, it depends on exactly how you compute it.
22 The computation that we've accepted is that Barwood has 70% of the market share.
23 Regency Cab, 18, Action Taxi, 8, and then Sun cab 5%.
24 Those could change over time.
25 There will be change when DOT assuming it does issue a set of new licenses at the end
26 of this calendar year--by the end of this calendar year as the current law applies.
27 MICHAEL KNAPP: So, it doesn't keep--what has been put forward here doesn't
28 necessarily keep people locked into the current market share?
29 MICHAEL FADEN: No, it doesn't.
30 It is a minimum.
31 In other words, it doesn't lock in the current market share at all.
32 And the market shares will change as a new set of licenses is issued assuming the
33 department does that this calendar year.
34 But then this also lets the director--it basically requires the director to allow a minimum
35 number of waivers by the smaller companies if the larger company gets any waivers
36 approved.
37 But it lets the director exceed that minimum number for the smaller companies.
38 MICHAEL KNAPP: Up to any number?
39 MICHAEL FADEN: Up to any number.
40 Although I think...
41 ARTHUR HOLMES, JR.: You would try to keep the market balance as best as you could.



October 21, 2008

1 You wouldn't throw the market balance out of whack.
2 MICHAEL KNAPP: I guess that's the question I have is we've unfortunately been
3 witnessing lots of market shifting over the course of the last couple of months as the
4 financial market kind of redistributes itself, companies that were significant and people
5 who were convinced would always be big companies have ceased to exist.
6 Smaller companies have been able to because they have had better business practices
7 that they have been able to take advantage of that in the marketplace and are now much
8 larger companies than they ever probably anticipated being.
9 And so I guess, I wouldn't want us to set us a situation where if we have a company that's
10 doing well, has very good business practices and has laid a good foundation which it
11 could expand, that it is limited by the fact that right now, they only have 10% of the market
12 share but they may actually have the capacity to do a lot better and now would be a
13 logical time for them to be able to do that.
14 ARTHUR HOLMES, JR.: You would have to re-compute to make sure that you have a
15 balance.
16 But, no, I would tell you that, you know, if you're getting 18 today and the way the market
17 falls out, you could get of 25.
18 I think that that would be something that you could do but, you know, as we put this down,
19 we were putting down something that said if you have a certain market share now, we're
20 not going to do anything initially that's going to change that market share because the
21 dynamics of getting the licensees getting additional license...
22 MICHAEL KNAPP: We're not going to pick a winner and a loser but if you get...
23 ARTHUR HOLMES, JR.: No.
24 MICHAEL KNAPP: But if you get a good plan in place, you could make the appropriate
25 purchases.
26 ARTHUR HOLMES, JR.: Well, we're trying to get competition.
27 Yes, we would do things that would get competition.
28 NANCY FLOREEN: Let me just comment from the Committee's perspective and certainly
29 from my perspective, the issue of--this is where the issue of the sunset is important
30 because we can assess where we appear to be going.
31 What I think we have concluded is that we don't know exactly what the right numbers
32 should be.
33 And if the market turns out differently from what it is at this moment, we will have an
34 opportunity within the next year to assess that.
35 We may want to revisit other elements of all of this.
36 ARTHUR HOLMES, JR.: Yeah.
37 NANCY FLOREEN: Remember this is all predicated on the work that was done some
38 years ago on certain allocations and assumptions and those may indeed change...
39 ARTHUR HOLMES, JR.: Yeah, this is a way of...
40 NANCY FLOREEN: This is more of a short-term-- ARTHUR HOLMES, JR.: Right.



October 21, 2008

1 NANCY FLOREEN: Solution if we were to look at larger, different ways to correct this
2 now.
3 Then we would go back to what I indicated at the beginning, I think, which the committee
4 was very interested in, which is sort of the structure of the system at which we really didn't
5 have the time to get into at this moment in time now were we prepared to do that and I
6 know Councilmember Berliner in particular was interested in this and in so far as
7 Councilmember Leventhal.
8 And I spent a lot of time on this the last time.
9 We're going to give this to Mr. Berliner to take on.
10 MICHAEL KNAPP: Right.
11 Now, at this point, Mr. Elrich has a question in the way of--Council member Elrich has a
12 question on this topic?
13 MARC ELRICH: Yeah.
14 MICHAEL KNAPP: Okay.
15 Yeah.
16 MARC ELRICH: So when does the market start functioning like a market?
17 I mean it seems to me that some people are in an advantageous position, you know, and
18 that we've done something to open up competition maybe but that we've basically
19 structured and on still on an unequal market.
20 ARTHUR HOLMES, JR.: Well, you did.
21 There was one major player in the market and you had several other smaller players.
22 Since the regulation, we have seen additional people come into--or companies come into
23 the market and they are looking to get a greater share of the market.
24 So, I don't know that I can answer your question except to say that the regulation as
25 written right now has improved competition and it has improved the service.
26 MICHAEL FADEN: The 2004, I'm trying to say, to add some detail--the law allowed the
27 department to issue up to 10% more new licenses every two years and they're in the
28 process of doing so.
29 It also restricted the number of licenses that the dominant player in the market which is
30 any company with more than 40% market share could get.
31 And I believe that the dominant player here has not applied for any new licenses.
32 And so, there has been more of an opening up of the market.
33 Now, this bill wouldn't change the market share except to the extent that drivers or
34 individual owners buy licenses from company A and can move their cabs, affiliate with
35 company B which is a free market decision.
36 MARC ELRICH: Right, but one company still winds up with disproportionate number of
37 these apparently...
38 ARTHUR HOLMES: Right.
39 MARC ELRICH: Very valuable licenses to share.
40 ARTHUR HOLMES, JR.: Right.
41 You're not forcing parity within the market with this particular waiver.



October 21, 2008

1 This particular waiver is done very--what do I want to say--kind of narrowly and the fact
2 that what we're doing is saying that you can transfer more than two and you can have
3 greater than 30% of individuals in the market.
4 But we are--and we can't, and right now, change the market dynamic.
5 MARC ELRICH: I guess the committee spent a lot longer on it and some people
6 apparently have gone through this twice and I understand the reluctance to go through
7 this fully again; but I'm concerned that there's--that we're not--if we're going to take this
8 opportunity to make something viable...
9 ARTHUR HOLMES, JR.: Well, what we...
10 MARC ELRICH: We should have taken the opportunity to make it fairer as well.
11 ARTHUR HOLMES, JR.: Well, in the time frame that you're talking about, I think that's not
12 probable but we did say, as a result of questions asked by the committee and some
13 specifically by Councilman Leventhal, we will have some consultant working and we will
14 have a consultant study and we will know more about the market when we come back or
15 at the sunset time in December.
16 But to try to restructure the market now for this particular occasion, I think, is almost
17 impossible.
18 MARC ELRICH: Yes, December what--two months from now?
19 ARTHUR HOLMES, JR.: December of '09.
20 MARC ELRICH: '09.
21 ARTHUR HOLMES, JR.: I'm sorry.
22 MARC ELRICH: Fourteen months from now.
23 ARTHUR HOLMES, JR.: Or next fall.
24 MARC ELRICH: I still look forward to that discussion.
25 MICHAEL KNAPP: Councilmember Berliner.
26 ROGER BERLINER: I guess I would share with my colleagues and may have a slight
27 disagreement with the director.
28 I do perceive that the step we are taking today to be a de facto restructuring of the
29 industry.
30 I find it difficult to imagine how the number of licenses that will now be allowed to be
31 owned by drivers is not going to be so significantly more than we have allowed previously
32 that it isn't going to fundamentally reshape the industry as a whole.
33 And one of the reasons why I was particularly supportive of the parity provision is we
34 didn't want to create a dynamic where the company in bankruptcy gets to do certain things
35 and those that aren't in bankruptcy don't get to do them.
36 And so, with the parity language, it will, in my judgment, put us on the road towards a
37 restructuring that we will then have to address the consequences of down the road in a
38 time frame we're allowed to do so.
39 ARTHUR HOLMES, JR.: Right.
40 As I indicated, we are going to get consultants who's going to look at what was going to
41 happen.



October 21, 2008

1 We may come back and say here is what we need to do as far as market shares or what
2 have you.

3 But to say--this is a waiver.

4 That's how I look at it.

5 It is a waiver for a specific time and that's the way we got it.

6 ROGER BERLINER: I appreciate that this is a waiver and I look at the same words in the
7 authority that you will now be given and perceive it to be the first step towards the de facto
8 restructuring of the industry which I'm not necessarily opposed to, but I was concerned
9 about giving you unfettered authority with respect to that, particularly as it related to the
10 competitive balance.

11 And so, I believe we fix that with your support to ensure that we do that across the board...

12 ARTHUR HOLMES, JR.: I think the language that we have now does
13
14

15 that.

16 ROGER BERLINER: Yes.

17 And I believe that the sunset provision which is in there ensuring that this council gets to
18 hear from you by the end of the year as to what consequences there are is another way in
19 which the council doesn't abdicate its responsibility to be a partner with you in this
20 exercise and notwithstanding the scars that my colleagues have had with respect to this
21 matter.

22 But I do want to share with you that in the context of restructuring, my colleagues and I
23 have been having a number of sidebar conversations.

24 Now, one of the concerns that has been raised with respect to owner--the drivers owning
25 their cabs is the difficult financial situation that they enter into by purchasing these cabs
26 often.

27 And the question came up as to whether or not you are contemplating or have
28 contemplated the possibility of providing some financing so that these owners don't get
29 themselves behind the eight ball from the get-go--some low-cost financing that would
30 assist drivers and doing this in a manner that doesn't create an incredible hardship or lock
31 them in to a particular company forever because of the obligations that they have now
32 undertaken.

33 Do you have any thoughts on that, Director?

34 ARTHUR HOLMES JR.: Well, I think that certainly that's a goal that should be--you
35 wouldn't want a driver to overextend himself, if you will.

36 But right now, I don't have any provisions or any way of doing that.

37 Certainly, we should look at that so that if we do have a shift toward, say, an individual
38 system, that we don't have people as indentured servants so...

39 ROGER BERLINER: That is the phrase that was bantered about up here as well.

40 ARTHUR HOLMES JR.: Oh, that could happen and I'm aware of that.

41 ROGER BERLINER: Okay.



October 21, 2008

1 Well, then, would you commit to us that if in fact you end up granting waivers of the scope
2 that many of us believe ultimately, is going to be necessary that you will immediately
3 explore the financing mechanism?

4 ARTHUR HOLMES JR.: I'll start that now.
5 I'll start looking at that.

6 ROGER BERLINER: That would be great.
7 Thank you, sir.

8 MICHAEL KNAPP: Councilmember Leventhal.

9 GEORGE LEVENTHAL: Well, just when George Bush is advocating nationalizing the
10 banks market, Elrich discovers the virtues of the free market.

11 It's a--we're living in amazing times.

12 It's a cognitive dissonance.

13 ARTHUR HOLMES JR.: It is an imperfect world.

14 GEORGE LEVENTHAL: The history of the taxicab industry in Montgomery County goes
15 back before any of us sat here; but fundamentally as I understand it, a decision was made
16 long ago that it would not be an unregulated free market because that would create a race
17 to the bottom.

18 And our constituents, the public believed that we, county government, have the
19 responsibility to ensure a basic minimum level of quality and safety and service.

20 And that's why, long ago, the number of licenses were limited to prevent anybody who
21 wants to from operating his or her own cab and cutting costs and cutting safety.

22 So, a long time ago, this regime, this restricted regime of licensing and issuing a limited
23 number of licenses which then because they're limited became a valuable and salable
24 commodity was created and so, we've been inherited that system.

25 And all we're doing with this bill is not actually moving away from the market.

26 What this bill fundamentally does is allow a private company to get some value out of
27 assets that it paid for and which it has been listing on its books for many years.

28 That's all this bill in effect does.

29 But to be fair, and the committee, I understand Madam Chair is now embracing the
30 proposal that Mr. Faden has written up in the packet.

31 We're also going to allow that company's competitors to get some value--some increased
32 value out of its assets.

33 It doesn't really move us any further, closer to or further away from a free market.

34 It isn't a free market.

35 It's a heavily regulated utility in effect.

36 And the reason for that is because our constituents think we're supposed to regulate it,
37 that if we just say, "You know what, forget it, let just let them drive cabs and it doesn't
38 matter and they can--anybody can drive and you're going to have as many or as few as
39 the market dictates, our constituents wouldn't be happy.



October 21, 2008

1 We got a lot of complaints some years ago when there was the perception that the
2 industry wasn't responsive enough, that there wasn't enough, that the service was
3 inadequate, they weren't fast enough.
4 And so, some do-gooder county council many years ago decided that it would be a
5 regulated industry and that's--huh?
6 No, before any of us got here, I mean, this--we've inherited a highly regulated, highly
7 limited regime where these licenses have great value.
8 I think the cautions that have been directed to Mr. Holmes are very much on point and I
9 remain quite concerned that we're authorizing new authority--I'm going to vote for this, but
10 we're giving him new authority without real clarity as to what he is going to do with that
11 authority.
12 And then, once he exercises it, what is the effect of that going to be?
13 I've got some concerns about that.
14 But that involves analyzing and projecting forward as to what will occur in a heavily
15 regulated industry, and some market projections, too.
16 But it isn't a free market, it hasn't been a free market for many decades, and I don't think
17 this bill moves as any closer to or further away from being a free market.
18 So, I think the point about making sure the drivers have access to financing is critically
19 important and not necessarily only company financing.
20 That's a real concern.
21 I think the point about not providing the potential for flipping and windfall profits.
22 I think we need to look at not issuing new licenses ourselves during this period of time
23 when Barwood is restructuring and its competitors are also trying to keep their footing and
24 not lose their drivers.
25 So, there's an awful lot on your plate, Director Holmes, and we're going to watch with
26 great interest as to how you administer this new authority.
27 It's not a happy situation...
28 ARTHUR HOLMES JR.: No.
29 GEORGE LEVENTHAL: From what I understand, Barwood made a decision to self-insure
30 and it had to pay heavily for that decision.
31 I think it's very important to point out that the circumstances Barwood is facing are not the
32 result of the county council's most recent, four years ago, to regulate this industry that
33 Barwood had a bankruptcy, had a lawsuit judgment against it having to do with an
34 accident that could have happened to anybody.
35 But because they self-insured, they had to come up with a large amount of cash.
36 So it isn't the result of the regulations that Barwood is facing the circumstances that it's
37 facing, it's mostly the result of its own decision, to self insure and then had to make a
38 massive payout and then it couldn't meet its other creditors.
39 So, it's a very unfortunate situation.
40 So then, the threshold question is a market question which I ask then which is in the
41 packet and we still don't have the answer



October 21, 2008

1
2
3 to is, "What if Barwood goes out of business?" You know, let the market function and let
4 them go out of business.

5 I think the result of that, at least in the short term, and I'm only operating on instinct which
6 we all of us have to do from time to time, would be worse taxicab service for my
7 constituents.

8 I can't see how having the major operator become inoperable is going to lead to better
9 taxicab service for my constituents.

10 So, on that basis, I'm willing to give this authority to Director Holmes, but it's not an easy
11 call and this is not--it's not an easy industry to grasp.

12 We've inherited years of decisions that have brought us to this point and you know, I think
13 we should go forward in this direction.

14 But we've given director Holmes a whole lot of blinking yellow caution lights that we hope
15 he'll monitor very carefully.

16 ARTHUR HOLMES JR.: One of the important things during this particular year is, as been
17 suggested, to look at the impact of what we're doing and look at the impact of, say, one of
18 the questions or one of the suggestions here that Councilmember Leventhal said, "What
19 happens if a major player goes out?

20 What happens as we change the number of PBLs that are held?" We don't know what will
21 happen, but we're going to look at that.

22 And as a sunset comes for the bill, we should have that information.

23 MICHAEL KNAPP: Councilmember Praisner.

24 DON PRAISNER: When selling a PBL, who sets the price for it?

25 ARTHUR HOLMES JR.: Who sets the price?

26 DON PRAISNER: Yeah.

27 ARTHUR HOLMES JR.: The market.

28 DON PRAISNER: It seems to me that to sit in the marketplace and Barwood has 100
29 licenses to sell and the other smaller companies have even less, that they could pretty
30 much dictate how many they're going to sell.

31 ARTHUR HOLMES JR.: Well, dictate how much they're going to sell?

32 No, because I will have something to say--I shouldn't say, somebody else may be.

33 But the director will have something to say about how many you're going to sell.

34 DON PRAISNER: I guess I'm concerned about parity and that if I have a hundred to sell,
35 and I can sell them for \$1,000, and my other fellow competitors can't sell it at that price
36 that they're going to be able to sell more and therefore take a greater share of the market.

37 ARTHUR HOLMES JR.: Well, you do have a control in the sense that you cannot have
38 more than 40% of the market.

39 And what we're doing here, we're not creating new license except for the 65 that we are
40 issuing this year.

41 We are just having the ownership transfer.



October 21, 2008

1 It's not creating new license.
2 So, the numbers are going to be the same with the exception of the 65 that we have that
3 we are authorized to sell this year.
4 DON PRAISNER: Okay.
5 MICHAEL KNAPP: Okay, we're starting around again.
6 Councilmember Elrich?
7 MARC ELRICH: I just want to assure George that just because I support nationalization of
8 the banks doesn't mean that I don't see an appropriate role for markets particularly in
9 small--and I would point out that I had conversations with a number of people in, you
10 know, some developing countries where their view is the same, that perhaps, that you
11 need to leave small markets intact, focus on the larger fish.
12 But I just want to say, my concern here is that in a regulatory...
13 MICHAEL KNAPP: It sounds like it's almost time for a Purple Line discussion.
14 It's what it sounds like to me.
15 MARC ELRICH: My concern is--my concern, George, is with the regulatory market in that
16 if we're going to regulate, we not have regulations in place that advantage one group over
17 another group.
18 It's perfectly possible to have regulations and wind up basically protecting an advantage
19 over another.
20 And I would want to make sure that whatever we do leads toward increasing leveling of
21 this playing field because I don't want to run a Montgomery County taxicab company and
22 the Department of Transportation.
23 So, that's my concern on this.
24 MICHAEL KNAPP: Okay.
25 Councilmember Berliner, then councilmember Leventhal and hopefully, we'll be done.
26 Oh...
27 DUCHY TRACHTENBERG: One more.
28 ROGER BERLINER: A follow-up observation to a comment that Councilmember
29 Leventhal made as well as the response made by Councilmember Elrich.
30 Councilmember Leventhal raised a question that I have raised with you earlier, Director,
31 that is the timing with respect to issuing new licenses that is currently contemplated.
32 And I asked for you folks to come back to us with explanation.
33 I had asked for you to come back to us with an explanation as to whether or not, in light of
34 the current circumstances, is this a good time to be issuing new licenses given that we are
35 possibly then going to allow a lot of those licenses to be sold to new drivers, or that their
36 existing licenses if not the new ones, would then be allowed to be sold?
37 So, I just find it to be a moment in time when caution is necessary and we'd be grateful for
38 you to comment on whether or not you feel in this particular climate, this is the right time
39 to be going forth with this new offering.
40 ARTHUR HOLMES JR.: I think we should go ahead.
41 ROGER BERLINER: You think you should go ahead?



October 21, 2008

1 ARTHUR HOLMES JR.: We should go ahead and regarding what the reasons some of
2 the taxicabs put themselves--you now, not necessarily do that and certainly, to make
3 profit.

4 But I think the system is built on having more service out there and we should do that.
5 It's going to be to make sure that we don't, make sure it's indicated, for lack of a better
6 word, a "caddywompus" system that is dominated by one.

7 And that, we will make sure, does not happen.

8 ROGER BERLINER: And, Councilmember Elrich, obviously, you appreciate that one of
9 the major changes that the committee's made with the Director's support is a parity
10 provision such that as we do this, we are in fact ensuring that the competitive balance is
11 not tipped through this process and in fact it could be enhanced through this process by
12 giving the smaller operators considerably more muscle than they currently have.

13 So, I think it could end up being that we strengthen our competitive situation in this
14 process but that's what we hope to hear in a few months from the director.

15 MICHAEL KNAPP: Okay.

16 Councilmember Leventhal?

17 GEORGE LEVENTHAL: Well, I just--I think Mr. Elrich's point is very well taken and I just
18 had the experience earlier this morning, if you haven't sat on the committee and you
19 haven't had the benefit of a discussion in committee, and then, you say, "Well, I think it's
20 important to do this," just understand that your colleagues on the committee share that
21 and we shared it four years ago that we don't want only one player, we want competition.
22 But consistent with the way the whole regulation of the industry emerged, we don't want
23 complete and total unfettered competition with no rules and no guidelines because, as I
24 said earlier, that could lead to a race to the bottom.

25 So, we tried to strike this balance where you have to meet safety requirements, you have
26 a limited number of licenses on the street.

27 You have to provide customer service within a certain time frame.

28 And what I learned in the committee session was, in fact, competition has increased.

29 There's at least one major new actor on the scene since we passed the bill four years ago.

30 You do have companies with resources now challenging Barwood's monopoly.

31 But let me just also say with respect to the market, Barwood emerged as the dominant
32 player as a result of the market.

33 They just had all the advantages that lead to monopolies.

34 They have more capital.

35 They had more resources.

36 They had more cabs.

37 They, you know--and they've been the cab company as you and I both know growing up in
38 this county for a long time.

39 So, we have tried to provide opportunities for competitors to get a footing in the industry
40 but it isn't government that created Barwood's monopoly position.

41 It's the market.



October 21, 2008

1 MICHAEL KNAPP: Council Vice-President Andrews?
2 PHIL ANDREWS: Well, I think taxicab regulation is a hard issue to get it right, and I want
3 to thank the committee and its chair Nancy Floreen for grappling with this issue over the
4 last four years.
5 And I want to ask Mike Faden to, you know, to reward that and to encourage that in the
6 future, which you suggest by rule, by resolution, by law or charter amendment that would
7 forever assign this subject to the T&E.
8 PHIL ANDREWS: Or should we do all of the above, just to be sure.
9 Thank you.
10 MICHAEL KNAPP: I share the council vice president's sentiment.
11 I would just include, I guess, I appreciate the efforts of the committee and appreciate the
12 efforts of the industry to come together to try and address the situation as it's presented.
13 I guess one of the issues I'm still struggling with is the threshold question as to, do we
14 need to be taking this action in the first place?
15 And I guess, I'm still not persuaded that this is necessarily the best course of action.
16 So, I appreciate all of the ancillary things that people have done since then to kind of
17 make sure all of the pieces are there, put all the blinking yellow lights out, and raise the
18 red flags, and do all those things that we've indicated.
19 And I think that that is going to be helpful.
20 I'm just not convinced that this is necessarily the best step right now, anyway.
21 But that's where I am so I'd be voting against it, but I think that the committee has done a
22 great job and I look forward to further recommendation from them in the coming years to
23 what they think we should do next.
24 NANCY FLOREEN: We can put you in the committee.
25 VALERIE ERVIN: Yeah.
26 MICHAEL KNAPP: No.
27 With that, Madam Clerk, yeah, I see no further discussion.
28 Oh.
29 MICHAEL FADEN: Mr. President.
30 One clarification we realize is needed in the language on page five, the conditions
31 language on insurance, it should say purchase of commercial liability insurance so we
32 would recommend that that be part of this amendment as adopted.
33 NANCY FLOREEN: Yeah, that's implicit.
34 MICHAEL KNAPP: Okay.
35 And we are prepared to vote, Madam Clerk, if you would call the roll on Expedited Bill 30-
36 08 Taxicab Licensing.
37 MADAM CLERK: Mr. ELRICH.
38 MARC ELRICH: Yes.
39 MADAM CLERK: Mr. Praisner.
40 DON PRAISNER: Yes.
41 MADAM CLERK: Ms. Trachtenberg.



October 21, 2008

1 DUCHY TRACHTENBERG: Yes.
2 MADAM CLERK: Ms. Floreen.
3 NANCY FLOREEN: Yes.
4 MADAM CLERK: Mr. Leventhal.
5 GEORGE LEVENTHAL: Yes.
6 MADAM CLERK: Mrs. Ervin.
7 VALERIE ERVIN: Yes.
8 MADAM CLERK: Mr. Berliner.
9 ROGER BERLINER: Yes.
10 MADAM CLERK: Mr. Andrews.
11 PHIL ANDREWS: Yes.
12 MADAM CLERK: Mr. Knapp.
13 MICHAEL KNAPP: No.
14 Bill 30-08, passes to 8 to 1.
15 Thank you all very much for your efforts.
16 We now turn to briefing on Purple Line Draft Environmental Impact Statement.
17 I believe Dr. Orlin is leading us through this.
18 Are you driving this train, so to speak?
19 Okay, as we get situated here.
20 Doctor Orlin?
21 GLENN ORLIN: Thank you very much.
22 The state has just released the alternatives analysis and draft environmental impact
23 statement for the Purple Line which is either a BRT, a bus rapid transit or light rail line
24 through Bethesda and New Carrollton.
25 They issued the report last Friday which starts a 90-day clock for which they're soliciting
26 public comments.
27 So we thought we should have this briefing today to bring everybody up to speed with
28 what the draft DEIS is saying on the alternatives.
29 The state has not selected an alternative yet.
30 That's the purpose of the next 90-days is about so folks can review the alternatives and
31 make their comments on them.
32 The only thing I want to point out before we start is, I turn over to the state is to outline the
33 schedule for the review of this project.
34 I mentioned the 90-days.
35 Within the 90-days, there's going to be four public hearings held by the state there in your
36 packet, two in Prince George's County, two in Montgomery County.
37 The two in Montgomery County; one is Tuesday, November the 18th.
38 It's at the National 4-H Center Connecticut Avenue at Chevy Chase.
39 There'll be an open house that starts at 4:30 in the afternoon which will continue through
40 the hearing.
41 The hearing itself will start at 5:00 and last for four hours until 9:00 that evening.



October 21, 2008

1 And the other hearing within Montgomery County is Saturday November the 22nd, the
2 following Saturday at Montgomery College Campus in Takoma Park, Falcon Hall there,
3 starting at 12:30 is the public open house and hearing runs from 1:00 in the afternoon until
4 5:00 in the afternoon.

5 After 90 days, the 90-day period is over on January the 14th of 2009, the Planning Board
6 is going to be having its review of the project and develop its comments on January the
7 8th, Thursday, January the 8th in the late afternoon and evening.

8 What they're going to do and what we're going to is take the comments that come from the
9 state's public hearing, collect them and have them available for respectively, the Planning
10 Board and the council so you can do your reviews with that input.

11 The T&E committee is going to take this up on Thursday, January the 22nd from 2:00 until
12 5:00.

13 The whole meeting is set aside just for the issue, develop comments.

14 And then the full council is scheduled to take this up on Tuesday, January the 27th and
15 we're planning on a half-day for the council to report that as well.

16 And then, as soon as possible after that, we will be sending a letter from the council
17 president to the secretary with the council's comments on the project.

18 Even though, the T&E and council sessions are after the 90-day period, we got
19 assurances from MTA that they'll still read the letter and take it to heart and approve
20 everything we say.

21 No.

22 But certainly, it's well before the state will be making a final decision on what the selected
23 alternative will be which likely is going to be late February or March.

24 And with that, I just turn it over to Mike Madden who's the study manager for the MTA on
25 the Purple Lines.

26 He's been in that position for several years and may introduce the other folks at the table
27 and go into the briefing.

28 MICHAEL MADDEN: Good morning.

29 Again, I'm Mike Madden with the Maryland Transit Administration, the state's Project
30 Manager for the Purple Line.

31 I have several consultants here with me, consultants that are under contract with the MTA,
32 Mike Flood from PB, Monica Meade from PB, and Greg Bends from PB and Dave
33 Romanowski from RK&K.

34 So we're here to go over briefly what the document's about and then specifically some
35 more focus on the portions of the project in Montgomery County.

36 In terms of the document, in our haste to get here from Baltimore, we left the documents
37 there.

38 They're on their way.

39 You all will get--receive, besides the executive summary hard copy that you received and
40 the CD you will receive, the full alternatives analysis, the draft EIS document.

41 That should be here shortly depending on the traffic.



October 21, 2008

1 So, we have that available for you.
2 And first, I just wanted to say that in reading the document and going through it, one of the
3 things that does come to light is the fact that the Purple Line as proposed would have very
4 significant, very significant benefits associated with it.
5 And we see that right now in the whole metropolitan region, nearly 10% of the transit trips
6 are taken in this corridor.
7 And that is because of the four Metro Rail Lines that exist in the corridor, the two branches
8 of red line, the green line and orange line, the fact that all three are commuter rail lines are
9 in this corridor, Amtrak and then there's extensive local and regional buses.
10 And as a result of interconnecting all of those existing systems, the corridor does have a
11 lot of ridership, very high ridership.
12 It does have significant benefits with it.
13 That being said, a project of this scale obviously does have some impacts.
14 We feel that they're relatively minor.
15 It doesn't mean we discarded them or ignored them.
16 Any impact is significant and we work very hard, very hard to minimize those impacts.
17 The impacts are noted as potential.
18 And as we go further in more detailed plans, we can tie those numbers down a lot closer.
19 But many of those that are even identified today as potential can be and will be avoided
20 as we go further.
21 I will skip through the project benefits in the first part of it and I will just go to Slide 6 here
22 just to remind you of the alternatives that are evaluated as part of the document; the no-
23 build alternative obviously which includes the transportation system that is out there today.
24 The TSM or Transportation Systems Management is a baseline alternative where we look
25 at what can we do to improve the existing transit services, the bus routes out there today,
26 everything short of building a new transit facility.
27 And then, we have three BRT options, low, medium and high investment.
28 And they largely differ in terms of not just the capital investment but also in terms of
29 dedicated exclusive lanes, grade separation, things like all those kind of things that helps
30 to improve travel time.
31 And then, we have three LRT options: low, medium and high.
32 All of these are included in the document and they thoroughly assess both in terms of cost
33 and benefits but also in terms of impacts.
34 The next slide just identifies representative travel times.
35 For instance, from Bethesda to Silver Spring segment, the travel times vary from the low
36 BRT of 25 minutes down to 9 minutes for the medium and high LRT options.
37 And then, there's further travel times also indicating for instance from Bethesda to New
38 Carrollton, a range of 96 minutes down to 50 minutes for the high-investment alternatives.
39 Next, for the ridership estimates, these are the same estimates we have been showing for
40 the last several months.



October 21, 2008

1 They vary from the low investment BRT of 40,000 daily boardings up to a high of 68,000
2 daily boardings, and as we've noted these numbers vary favorably to systems that are
3 seeking federal money and also systems that are in operation today.

4 In terms of the travel market, one of the interesting facts that we found is that 40% of the
5 Purple Line riders will use a portion of their trip on Metro also.

6 So, that attests to the direct interconnections that we're making between the Purple Line
7 and the various Metro Rail Lines and also the Marc Commuter Rail Lines.

8 Most of the trips are short trips; for instance, from one Metro Rail Line to another, from
9 one business district to another, and also in between the neighborhoods along those
10 Metro Rail Lines.

11 In the end, the Purple Line would provide a new set of links in the extensive regional
12 system that we have right now today.

13 In terms of reduction in auto trips, what we have found is that roughly 30% of the riders
14 that are estimated would be new transit trips.

15 Those would trips that would be diverted from autos to transit.

16 So, we do see a reduction in auto trips.

17 We do see a savings in fuel consumption and environmental impacts.

18 As far as cost effectiveness, right now, they, basically, all of the alternatives will be able to
19 meet the federal transit administration threshold for cost effectiveness.

20 Cost effectiveness, just to remind you, is defined as the capital and operating cost
21 annualized divided by the benefits of the transportation system user benefits which mainly
22 are in the form of travel time savings and ridership.

23 The cost effectiveness as we've emphasized a lot is one of the key factors in terms of this
24 project being eligible for federal funding and going forward.

25 That is because it is basically a pass-fail kind of evaluation.

26 All you have to receive at least a medium or better rating on the cost effectiveness despite
27 what the other factors or criteria are for the project.

28 After the public hearings, the preferred alternative would be selected.

29 That preferred alternative then is what we put forth to the federal transit administration.

30 And that's what is evaluated by them to determine whether the project meets their cost
31 effectiveness and other criteria in terms of funding, funding availability, and then also
32 determines whether we go to the next phase which is preliminary engineering and final
33 EIS.

34 In terms of funding, the source of funding would be state and local jurisdictional
35 contributions along with federal funds which we're anticipating to be in the area of 50% of
36 federal shares towards the project.

37 In addition, what we would be doing before we submit this New Starts report, after the
38 preferred alternative is selected, is we have some further refinements that will be made to
39 the travel forecasting model so we will have new ridership estimates, obviously.

40 We would update the cost estimates also.

41 That will all take place before we submit this New Starts report.



October 21, 2008

1 And then, we'll request permission to enter into the next phase, preliminary engineering,
2 and the final EIS which would begin by the fall of 2009.

3 In addition, starting on slide 24, just to bring you up to date on ongoing coordination, first
4 of all, as far as public outreach is concerned, we continue to have an extensive public
5 outreach program that's included over 300 meetings including presentations to community
6 associations, business groups, neighborhood groups.

7 And those meetings are continuing today.

8 We also have worked closely with established community focus groups.

9 We've identified, we've established eight of those along the project and we carry out small
10 work sessions with those groups.

11 Those groups represent individual segments of the project.

12 And we also held a number of large open house meetings along the corridor.

13 And then, if you're interested, we could go through a little bit more specific information in
14 terms of the Purple Line Corridor in Montgomery County from west starting at the
15 Bethesda station going east.

16 Is that okay?

17 MICHAEL KNAPP: Go ahead.

18 MICHAEL MADDEN: First of all, in terms of the Bethesda terminal, we're continuing to
19 work with the Woodmont East Development Team and Montgomery County and the
20 Parking and Planning Commission to first of all, to make sure that our plans are consistent
21 with the development proposals at that location; also to allow for the Purple Line to come
22 through there.

23 There is an area where we would have a tail-track just slightly beyond the station area and
24 we are working today even to improve that situation and minimize the impact, any impact
25 that it may have on the Woodmont pedestrian area.

26 We have continued to respond to comments raised by the town of Chevy Chase and their
27 consultants.

28 The next is the slide 27, I think it is, does show our alignment in the fact we're able to
29 bring the trail through the tunnel and then back down at grade before reaching Woodlawn
30 Avenue.

31 And, like I said, we're working with the property owners of the building of the Apex
32 Building and Air Rights Building to see if we can lower both tracks so that we can provide
33 for a better trail through the tunnel.

34 On slide 29, this is the--our existing plans right now provide for us to lower one of the
35 tracks and have the trail up above that through the tunnel.

36 And the next slide, on 30, is what we're working towards to be able to lower both tracks so
37 that we have more room for the trail up above the transit way.

38 This is something that we're continuing to work with, the property owners in that area.

39 It is something we feel we can achieve to improve the trail through the tunnel.



October 21, 2008

1 The next slide 31 actually shows the Bethesda station, the fact that we would have high
2 speed elevators on Elm Street that would go directly down to the purple line station and
3 then down further to the Metro Rail Station.
4 In addition, as far as the county's master plan alignment, which is along the Georgetown
5 branch railroad right of way, that area is--in all areas except for one is 66 feet, a minimum
6 of 66 feet.
7 There are some areas such as through the country club where it widens out to 100 feet.
8 Through Rock Creek, it's 225 feet.
9 And what we have been able to do there is to show that we can build both the transit way
10 and they trail next to each other through the entire master plan alignment.
11 Currently, up on slide 33, the trail itself, the current trail that's out there today which is the
12 designated interim trail occupies roughly 15 to 20 feet with the purple line and the
13 permanent Capital Crescent Trail built, we would occupy between 60 and 66 feet.
14 The transit way itself would extend about 30 feet for the double track areas and for two--or
15 for two lanes of the bus rapid transit option.
16 The trail itself is 14 feet, 10 foot paved with two-foot shoulders.
17 And then, in most areas, we are also able to provide a buffer in between the transit way
18 and the trail along with visual screening along the 66-foot right of way.
19 One of the changes that we made as far as the master plan alignment was to locate the
20 trail, relocate the trail from the south side to the north side.
21 What that allowed us to do was to increase the horizontal difference between the transit
22 way whether it is light rail tracks or bus rapid transit lanes, and then also to increase the
23 vertical separation between the two.
24 Because in most cases, the trail can be 3 to 4 feet higher than the transit way would be.
25 Some of the potential benefits that resulted from this change in terms of relocating the trail
26 from Pearl Street to just west of Jones Mill Road include the improving the visual
27 experience for the trail, more of a vertical separation, greater comfort level for trail users.
28 It also limits the pedestrian track bed crossings to designated crossings, acts as a screen
29 or barrier between the transit way and trail, minimizes the amount of sound wall, retaining
30 walls that would be required and minimizes the environmental and construction impacts
31 also.
32 One of the other things we have proposed along the master plan is to build the light rail
33 line if that's the alternative selected along grass tracks to, mainly, to improve the visual
34 quality of that segment of the project.
35 And then we had produced a number of videos that show the permanent trail and the
36 Purple Line in the area of Bethesda and Chevy Chase.
37 We've got some still photos of that including a crossing near Sleaford Road, and then also
38 right adjacent to the Riviera Condominiums just before East-West highway.
39 In addition, on slide 42, just to summarize some of what's been going on with the town of
40 Chevy Chase in terms of us responding to their comments and comments distributed by



October 21, 2008

1 the town's consultants, we did have a meeting at the end of August where Secretary
2 Piccari attended.

3 We did make a presentation to the town of Chevy Chase.

4 We also provided them with several reports responding to comments and concerns that
5 were raised by the town and their consultants.

6 And we continue to exchange technical information in terms of additional requests for
7 information from the town and their consultants and also continuing to respond to new
8 concern or basically the same concerns that the town has raised.

9 As result of those comments, one of the things we did and this is included in the document
10 you will receive is we looked at two different medium investment bus rapid transit
11 alternatives that we have not initially looked at.

12 Right now, the low BRT option is the only option that actually uses a
13
14

15 Jones Bridge Road alignment.

16 So, what we did was we included a medium BRT option that would run on Jones Bridge
17 road with the medium portion of the BRT east of Jones Mill Road, in other words, through
18 downtown Silver Spring, and continue with east all the way to New Carrollton.

19 And in addition, we also evaluated an alternative that would use the master plan
20 alignment, a BRT alternative, but then extend beyond the current Bethesda station up
21 north along Woodmont Avenue and include a station at north Woodmont which was
22 suggested by the town of Chevy Chase and go serve the existing, the NIH and the Naval
23 Medical Center area.

24 And on slide 44, we have the results of that event analysis which again is in the document
25 by looking at a medium alternative on Jones Bridge road instead of just the low-
26 investment alternative.

27 We were able--in that case, the ridership estimates do increase up to 52,000 from the
28 40,000 at the low end for that alternative.

29 And then we also looked at a medium--I mean, well, it went from 40,000 up to 50,000.

30 The 52,000 is what our current medium BRT would have in terms of ridership.

31 And then we looked at using the master plan alignment, but then also extending that
32 alignment north to Woodmont and in that case, the ridership estimates were 58,000 daily
33 boardings.

34 By making those differences, we do increase ridership but we also increase the cost
35 estimates.

36 That was all part of what we have discussed and met with the town of Chevy Chase to
37 explain how we responded to their comments, and how we looked at the proposals that
38 they were putting forth as far as improved BRT option to serve the Naval Medical--
39 National Naval Medical Center area.



October 21, 2008

1 We've also evaluated very thoroughly the impacts associated with BRAC in terms of the
2 number of visitors, in terms of the number of additional employees that will be transferred
3 there.

4 And what we've shown here on slide forty five is that the NIH, National Naval Medical
5 market today in terms of employment is roughly 26,000.

6 The population is 1,600.

7 By 2030, which is our planning horizon, employment would increase to 32,700.

8 That is based on the BRAC program and then that is in contrast to the Bethesda CBD--

9 Bethesda Central Business District where we have employment of almost 36,000 with a
10 population of 10,500 and those further increased up to almost 41,000 in and 23,000 of the
11 population in 2030.

12 Now, the point of this analysis was to address the town of Chevy Chase concern that--or
13 comment that it was more important to be serving the National Naval Medical Center as a
14 result of BRAC.

15 What our analysis shows is that the Bethesda CBD is the larger, more important market at
16 today and it remains that through 2030 even with BRAC and what we--what the result of
17 that is that the alternatives that are on the master plan alignment, that go to directly to the
18 Bethesda CBD, have improved travel times, those result in higher ridership numbers than
19 if the line were to first go to the Naval Medical Center and then down to the Central
20 Business District of Bethesda.

21 Continuing on, we have worked actually very recently, very closely with Columbia Country
22 Club and we are looking at a potential shift of the alignment to reduce the impacts through
23 the Ts--2 or three of the Ts and one of the greens that have encroached into the county.

24 Right away, this was something that they requested us to look at.

25 And we will be getting back to the country club within the next couple of weeks.

26 We also have worked closely with Montgomery County to incorporate one of the
27 alignment options that would extend beyond the Silver Spring Transit Center across
28 George Avenue on Bonifant Road and they go into the site identified for the future Silver
29 Spring Library and this drawing shows that we've also been working most recently with the
30 architects for the library site to incorporate both Purple Line alignment and the station
31 within the development of the library along with the development for a residential--
32 residential development that would be located along with that library site.

33 We also have continued to work with the East Silver Spring community associations to
34 address the concerns about noise and traffic impacts.

35 One of the options that we evaluated that we've recommended has to do with shared
36 lanes for roughly a mile of that alignment along--along Wayne Avenue.

37 And that does a couple of things.

38 First of all, it greatly minimizes impacts to residences of that front Wayne Avenue while
39 still providing very reasonable travel times for the Light Rail or Bus Rapid Transit
40 alternatives.



October 21, 2008

1 It also, with providing new left turn lanes along the Wayne Avenue at the signalized
2 intersections, it would actually improve traffic conditions along what would happen in the
3 no-build situation, in other words if the Purple Line were not there.
4 Next we do--show some of the--we have produced videos along Wayne Avenue.
5 This is just one photograph taken of that.
6 And again this option provides for the transit way operating in shared lanes with traffic so
7 we would not have to widen along Wayne throughout the whole area, only at the
8 signalized intersections where we would provide third lanes.
9 Continuing east along University Boulevard, the BRT and light rail options would operate
10 in dedicated lanes, on the inside lanes if it's a light rail, on the outside lane if it's bus rapid
11 transit.
12 And we've also incorporated the design of the Takoma Langley Transit center.
13 To account for that, the Purple Line would have a station located adjacent to that, but
14 would not impact that facility itself.
15 That project is on a separate schedule.
16 It has already funding identified for it.
17 We're still held up in terms of acquiring the property but the design of the transit center
18 itself is going forward.
19 Just to end our presentation, just as a reminder, the document itself was made available
20 last Friday on the 17th.
21 That begins what we planned to have and that is a 90-day comment period.
22 We were requested to extend it from the standard 45 days to the 90 days.
23 The 90 days then goes to mid January--January 14th.
24 During that time, the public, and obviously the eight local jurisdictions are able to submit
25 comments and make comments in writing, attend the public hearings, and also commit--
26 submit comments through our website so there's a number of ways that comments can be
27 submitted, all those comments, whether they're testimony at the public hearing or whether
28 they're letters, all those will receive the same consideration.
29 We've also identified here the public hearings that start with November 15th in New
30 Carrollton, and then Tuesday the 18th at the National 4-H Center in Chevy Chase, College
31 Park, Ritchie Coliseum on Wednesday the 19th and then Montgomery College on
32 Saturday the 22nd.
33 So, we have four public hearings, two in each county.
34 One in each county will be held on the Saturday so we're able to accommodate those
35 people that want to provide oral testimony at the hearings.
36 Lastly, in terms of the schedule, again that circulation period would end in mid-January
37 with the public hearings being held in November.
38 The selection of the preferred alternative would be made following the entire public
39 hearing process and we're anticipating that to take place sometime in the February to
40 March time frame.



October 21, 2008

1 And then, like I said, we would make some additional refinements to the travel forecasting
2 model and get that ready to submit a New Starts report to the Federal Transit
3 Administration in the spring by May or at least by June of 2009 and then we would request
4 permission from FTA to begin the next phase which is preliminary engineering.
5 And then the record of decision we're anticipating to be for the year 2010.
6 With then, final design to move forward.

7 And finally, construction, we're still estimating optimistically that the construction could
8 begin in the year 2012, provided funding would become available--becomes available.
9 We are definitely willing to answer any questions you all have at this point.

10 MICHAEL KNAPP: Thank you very much for the overview.

11 We appreciate it.

12 For the benefit of my colleagues, this is--as Dr. Orlin indicated, this is the beginning of the
13 discussion.

14 And so, what I'm hoping we'll do is get the initial questions out there.

15 We're supposed to be traveling offsite to meet with the Planning Board at 1:30 so what I'd
16 like to try and do is see if we could conclude this by about 12:30 this morning.

17 That's about half an hour which I think should get most people's questions out there.

18 With that, Councilmember Berliner.

19 ROGER BERLINER: Mr. Madden, good to see you.

20 MICHAEL MADDEN: Thank you.

21 Nice to see you.

22 ROGER BERLINER: I appreciate--as I think you appreciate, this is a matter of some
23 controversy in my district.

24 MICHAEL MADDEN: I've heard that.

25 ROGER BERLINER: You've heard that?

26 So I want to thank you for the courtesy you have shown my office in the number of
27 conversations we've had with respect to this as well as your willingness to engage the
28 community, in particular, the town of Chevy Chase, who I know you have some
29 disagreements with, but to engage them on their terms, to engage them respectfully and
30 to--if you--in the end you cannot agree with them, at least, we will, you will have evidence
31 of a willingness to listen and to respond to the best of your ability to the concerns that they
32 have raised.

33 I take it from your observations today in this packet that you do perceive there to be sort of
34 a fundamental difference with respect to the alignment issue that the town of Chevy
35 Chase has promoted and that is that their belief that the Jones Bridge Road alternative by
36 connecting with the BRAC expansion that we are going to face in that community is a
37 preferred route because of the number of people that will be traveling there and feel that
38 you have not fully taken into account the additional ridership that would come from that.
39 And as I understand, in your response today, you believe you have looked at that and
40 have concluded otherwise.

41 MICHAEL MADDEN: That's correct.



October 21, 2008

1 We feel we have given that comment, that idea put forth by the town a lot of consideration.
2 We've looked at it extensively and we've provided that information to the town.

3 The bottom line is that BRAC is coming.

4 They will have some impacts but it's a reason to definitely choose a Jones Bridge Road
5 alignment--that what we've shown is that whether it's bus rapid transit or light rail transit,
6 the greatest benefits are achieved by actually using the Montgomery County's right of way
7 along the Georgetown branch.

8 And so, we do not agree with their assumption that the project would work best on Jones
9 Bridge Road.

10 We've evaluated that as an alignment.

11 It's still in alignment in our alternatives analysis but the bottom line is, it just doesn't
12 compare as favorably in terms of travel time, benefits, in terms of benefits to the region as
13 far as providing a faster and more reliable transit service.

14 ROGER BERLINER: You have provided the town a response, I believe, yesterday, a
15 formal letter in response to their most recent request for additional information from you.
16 I have seen a copy, but I don't know if my colleagues have, of your response to the town.
17 I would hope that you would make that correspondence from you to the town public for us
18 to have in our files.

19 MICHAEL MADDEN: Yes.

20 Actually, the letter--we have received a number of requests for information from the town.
21 We've responded--we produced one response.

22 We're about to make another response.

23 This letter was actually in response to a letter that the town sent to elected officials.

24 ROGER BERLINER: Thank you.

25 MICHAEL MADDEN: And it was forwarded to us and we thought it was important enough
26 because of some of the information in there to clarify the issues and respond to that letter.
27 So that's what that letter is.

28 ROGER BERLINER: Thank you.

29 MICHAEL MADDEN: And we'll be glad to make that available.

30 ROGER BERLINER: It was a day of letters because I sent the Secretary a letter myself
31 yesterday with respect to your--the draft and your appearance before us today in which I
32 shared with the Secretary and asked him to share with you the concerns that members of
33 my community have with respect to the DEIS and that is, principally, two things.

34 One, we see this lovely picture and quite frankly, it looks very attractive, if you look at this
35 picture and you see--my goodness, it's going to look like this?

36 And my community has reservations as to whether it really will look like this so that your--
37 in your document, when you say that the responsibility for the trail is
38 going to rest with Montgomery County, they say, "Well, Montgomery County doesn't have
39 any money right now.

40 How are we going to ensure that this trail, one, actually happens contemporaneous with
41 the light rail and, two, is as beautiful as you project in these lovely pictures?



October 21, 2008

1 MICHAEL MADDEN: Well, first of all, the cost of building the trail and building the trail
2 similar to this is included in the project today.

3 It is included in the numbers that we presented in terms of cost effectiveness.

4 What we have said in the document is that--and this goes way back, probably as far back
5 as Glenn goes.

6 ROGER BERLINER: No.

7 Nothing goes that far back.

8 MICHAEL MADDEN: The original idea was, and still is, is that the county would own and
9 maintain the trail.

10 The trail with the specifications of the trail has all been given to us by the county.

11 The other understanding, the original understanding was that the county would pay for the
12 trail.

13 Now, what we're suggesting in the document is that it would--we would like to look for
14 some other way to fund the trail so that we could take that cost out of it.

15 What that would do, it would improve the cost effectiveness that we have today.

16 We're not saying we're not committing to the trail.

17 It's in the cost estimate.

18 The hope is that either Montgomery County or from some other Federal funding source for
19 trails of that portion of the project because it does increase the cost, it could be funded
20 separately some other way.

21 ROGER BERLINER: But with respect to what it would ultimately look like regardless of
22 who funds it, my hope is that you will ensure that the level of landscaping and screening is
23 such that this really does look like the picture because we can't have a bait and switch on
24 something this fundamental.

25 We are making--you are making representations every time you show this.

26 You are making a representation.

27 This is what it's going to look like and it's important that we ensure that in fact, it does, if
28 this is how it plays out ultimately.

29 MICHAEL MADDEN: Yes.

30 ROGER BERLINER: I just seek your assurances that regardless of who has the
31 responsibility, that there would be an obligation, whether it's Montgomery County's or the
32 State's or the Fed's, to ensure that it's actually as good-looking as this suggests it would
33 be.

34 MICHAEL MADDEN: Yes, we've committed to that.

35 Our intent was to make the trail as attractive and as good of a trail experience as we
36 could.

37 And we found a number of ways to do that like putting it on the other side, like providing
38 buffer in between there.

39 Obviously, there are areas where new landscaping would have to have time to grow but
40 eventually, this is what we expect to happen.

41 ROGER BERLINER: I appreciate that.



October 21, 2008

1 The other issue that I raised with you and that you alluded to in your comments was the
2 tail tracks going into Woodmont East.
3 I work very hard with the Planning Board to ensure that that particular corner of Bethesda
4 and Woodmont East is a "public commons," a place where we can all gather, a place of
5 green space.
6 The picture that you have here in your presentation--help me find it here--I believe it's
7 pretty much in the beginning.
8 MICHAEL MADDEN: It's on slide 26.
9 ROGER BERLINER: Yes, in slide 26.
10 With the greatest respect, that's not what we want to see there.
11 And I understand that that picture was done prior to your coming to an understanding that
12 you could change the track elevation in a manner that would allow that tail track to stop
13 much sooner than this picture represents and that your goal now is to see whether or not
14 those tail tracks can stop, literally, 50 feet from the Apex building such that it does not
15 intrude upon the public commons and this public space that we're working so hard to
16 create.
17 Is that a fair understanding of...?
18 MICHAEL MADDEN: Yes, that's correct.
19 Fifty to a hundred feet...
20 ROGER BERLINER: Okay.
21 MICHAEL MADDEN: Outside that tunnel is what we're trying to limit it to.
22 ROGER BERLINER: Right.
23 I'm sorry.
24 I said 50, you said...
25 MICHAEL MADDEN: Okay.
26 ROGER BERLINER: Fifty to a hundred?
27 I hope we're working towards 50.
28 MICHAEL MADDEN: Okay.
29 Can we go for 51?
30 ROGER BERLINER: We can go for...
31 Okay.
32 But I do think--it's very important because we worked really hard on this place that's...
33 MICHAEL MADDEN: Yes.
34 ROGER BERLINER: That's going to be the heart of Bethesda and, clearly, to the extent to
35 which we can have these tail tracks removed from that vibrant, public common space, I
36 think it changes the impact of this particular project considerably.
37 MICHAEL MADDEN: Yeah, we agree with you very much so and, again, we've worked
38 very closely with the developers and the County to improve that area, to make it very, very
39 worthwhile.
40 ROGER BERLINER: And let me just make one final observation and just to affirm what I
41 believe, Glenn has said to us, and what you have said, you haven't made a decision yet,



October 21, 2008

1 the Governor hasn't made a decision yet, as to which of these options the state is going to
2 recommend, that this is an analysis of a variety of alternatives but this document does not
3 say we are going to have light rail along any particular route or that we're going to have
4 bus rapid transit.

5 You have not made that decision yet, as I understand.

6 MICHAEL MADDEN: That's correct.

7 The document provides all of the information in terms of each alternative, in terms of the
8 benefits, the impacts, but it does not lead to any conclusion.

9 That information along with the public hearing comments that have been put forth
10 throughout our five or six years on this project, all of that is what the decision makers will
11 use in order to make the decision.

12 ROGER BERLINER: And should you conclude that one of these options should go
13 forward, let's assume it's the light rail for purpose of this conversation, does the state have
14 the dollars that are going to be necessary to support this application to the Feds?

15 MICHAEL MADDEN: The state has--we have enough funds to carry the project out
16 through the next several phases which would be the next several years or so.

17 We have enough money to go the next phase which is--to complete the next phase--which
18 is preliminary engineering.

19 We have enough funds to go towards design of the project.

20 What we don't have today is enough money to actually build the project.

21 But we're not--at this point, the project is not in a position to use money to build the
22 project.

23 We still have...

24 ROGER BERLINER: When will we need to have those dollars in an optimistic scenario?

25 MICHAEL MADDEN: I would say around 2012 or so.

26 ROGER BERLINER: That's when we have to demonstrate to the Feds that we have those
27 dollars over for them?

28 MICHAEL MADDEN: Yes.

29 Right.

30 MIKE KNAPP: After the Feds demonstrate they actually have dollars for them.

31 ROGER BERLINER: Yeah, right.

32 MICHAEL MADDEN: Yes.

33 MICHAEL KNAPP: Okay.

34 ROGER BERLINER: Thank you.

35 MICHAEL KNAPP: We've got four folks.

36 There's three or more folks with questions.

37 We have about 15, 20 minutes.

38 Councilmember Leventhal?

39 GEORGE LEVENTHAL: Increased convenience, reduced commute times, alternatives to
40 the automobile, a way to get out of traffic, access to jobs, fewer greenhouse gas
41 emissions, less dependence on imported petroleum, closer link to great research



October 21, 2008

1 university, the University of Maryland and college park, protection and enhancement of
2 the hiker-biker trail, what other project now under way provides so many benefits for our
3 constituents?

4 I really want to thank Mike Madden for staying with this project and his team, over the
5 years even when times were fallow under Gov.

6 Ehrlich who didn't support this.

7 And I really want to congratulate Sec.

8 Precari and Administrator Whittefeld and especially, Gov.

9 O'Malley, who have turbo-charged this project now.

10 In just two years, we're on the verge of submitting a detailed proposal to the Federal
11 Government that I'm very optimistic based on all of the criteria that Mike has just laid out
12 here will win Federal funding.

13 Now, things are bad in the United States today and there is enormous cynicism and
14 mistrust of government's ability to govern.

15 And what we're talking about today is a project that really will prove, once and for all,
16 whether we can get things done for the benefit of the people who send us to office.

17 Can we pull together and advocate for something that is so clearly in the public interest, in
18 the regional interest, and in the national interest?

19 There is going to be stiff competition for Federal funding, and if we don't get our act
20 together--and I'm talking about our Congressional delegation, our General Assembly,
21 senators and delegates, our County Executive, and this Council, we will lose.

22 We won't provide those benefits.

23 We won't reduce traffic.

24 We won't provide people with a better way of getting from home to work and to the
25 university.

26 And so, of course, and as we hear, MTA is evaluating the fairly narrow concerns involving
27 a few feet here and there, how much right of way, what will be the structures, where will
28 be the buffers, what would be the mitigation--serious issues--but let us not lose sight of
29 those benefits that we can provide.

30 We're all about trying to meet people's needs.

31 That's why we ran for office so I am heavily invested, I am extremely supportive of the
32 process that MTA has embarked upon and has carried very far along.

33 We're so far down this road, so much further than I ever thought we would have been
34 when I served on this Council on my first term when Mr. Ehrlich was governor.

35 And I just am delighted with the listening that has going on, with the responsiveness that
36 has gone on.

37 I represent the entire county, I am at large.

38 I know I've met with representatives of the town of Chevy Chase and the trail advocates
39 and the folks in East Silver Spring, it seems to me we are going to meet the threshold
40 tests that the primary policy makers have set forth.



October 21, 2008

1 Most of all, we're going to protect and enhance the hiker-biker trail so our members of
2 Congress can vigorously advocate for this project.

3 We're going to make--we're going to create less traffic, not more, in the congested area
4 around the Silver Spring metro so we can effectively create a real linked East-West
5 transportation network which is the critical flaw in the metro map.

6 I've spoken recently with some of our members of Congress and the concern is that
7 Montgomery County--we understand--it's a big county.

8 It's a sophisticated county.

9 The public speaks with many voices, we understand that, but those of us who have the
10 responsibility of making policy judgments on behalf of the people who send us here, we
11 have to weigh the difference between the narrow and the large.

12 And if we are just a cacophony of disagreement, if we can't get behind this inclusive
13 process that MTA has set forth, we'll lose it all.

14 We'll lose it all.

15 We won't get anything.

16 So, now is the time, during this 90-day time frame for the public to engage, for community
17 members to participate, for elected officials to participate, for this Council to speak with
18 one voice, for the County Executive finally to join us, for our Congressional delegation to
19 understand this is what the public is crying out for--traffic relief, environmental benefits,
20 regional unification, access to the University of Maryland.

21 We can make this happen.

22 It's going to improve our quality of life.

23 We'll be a better place to live.

24 And I just, again, thank the MTA who has taken a great deal of abuse and has been
25 patient and responsive.

26 This is a better document now as a result of the input that you gotten and it hasn't always
27 been easy but I see the way you're responding to legitimate concerns about Woodmont
28 East, about the trail, about East Silver Spring, you're bending over backwards, the country
29 club, to accommodate these legitimate issues and you haven't stopped, and you're
30 moving forward and we're going to make this happen.

31 If we can have clarity on our overall objectives and recognize what we stand to lose, we
32 need to pull together and support the Purple Line now.

33 MIKE KNAPP: Council member Floreen.

34 NANCY FLOREEN: Thank you.

35 This is the first of many momentous events, I suppose.

36 It's really exciting to see us moving on and really connecting the different spokes of the
37 metro system with the Purple Line and I do, I share the council members' enthusiasm and
38 certainly Councilmember Leventhal has been a prime cheerleader for this project.

39 I want to thank the State for all their hard work.

40 Our time is passing and I'm not going to spend too much time on general observations but
41 I did have a couple of questions.



October 21, 2008

1 With respect to the trail, the Capital Crescent Trail, I'm really committed to high quality trail
2 and preservation and achievement of that along the right of way and I'm glad you've
3 highlighted that in your pictures.

4 When we get to the Committee Meeting, Glenn will you be in a position to sort out for us
5 where we stand in terms of what part of the DEIS is the Purple Line and what part is the
6 trail?

7 I'm a little unclear as to some of the elements that are assumed in the report.

8 You're saying Mr. Madden that the trail numbers are assumed in the cost effectiveness
9 elements but the allocation is not in terms of who might be responsible for what.

10 That's what you're saying?

11 MICHAEL MADDEN: All the costs in terms of building the transit way and the trail parallel
12 to each other are in the project cost.

13 The only thing we have suggested in the document is that it would be--we would hope that
14 either Montgomery County or some other source of money were able to fund the cost of
15 the trail.

16 NANCY FLOREEN: Yeah.

17 So, the--whatever that number is and whatever defines the trail in terms of the green
18 space part, the landscaping, the trail itself, whatever it is, if we can be prepared to
19 understand what that portion is.

20 I mean I'm really rather optimistic these days with the talk about a stimulus plan that
21 involves some actual infrastructure funding.

22 We'll see---I'm not sure.

23 I guess we shouldn't hold our breaths ...

24 MICHAEL MADDEN: Right.

25 NANCY FLOREEN: But it's possible that there may be some help in the federal horizon
26 with respect some of the re-authorization work that's going to be going on next year and,
27 indeed, there may be another resource to fund this.

28 We'll want to keep a very close eye on that.

29 And Glenn, you want to...

30 GLENN ORLIN: Yeah, I'd just add a little quick.

31 NANCY FLOREEN: Focus into that.

32 GLENN ORLIN: This would follow up with what Mike was saying earlier about that trail.

33 The Capital Crescent Trail, when it was completed from Bethesda South, much money for
34 that was paid for out of federalized T funds.

35 NANCY FLOREEN: Right.

36 GLENN ORLIN: And that's potentially another source we could tap to help pay for the trail
37 portion here even if it's not explicitly finally in the Purple Line cost.

38 I mean what the state has committed to is to design the project whether it's B R T or light
39 rail with a trail next to it.

40 In fact, there are a lot of additional costs in that which wouldn't have to exist if it was just a
41 light rail or if there's just a trail.



October 21, 2008

1 The fence, some of the grading that reaches some retaining walls, the amount of re-
2 landscaping that has to be done--these are shared costs between the trail and the light
3 rail.

4 So, it's not a simple answer as to what is the trail portion of it.
5 It's subject to debate.

6 And the last thing I want to say about this is what will have to happen towards the end of
7 this process, probably even after January but some price, you know, in February, March is
8 a discussion as to the sharing of the cost because when they make a New Starts
9 application, the Feds are going to want to see where is the non-federal share going to
10 come from.

11 And the States has been pretty straight forward for a number of years saying that some
12 portion of that they would expect from the County.

13 Well, it's all part of this larger picture of what is the County's contribution whether it's on
14 the trail, whether it's on the Southern entrance, whether it's on other aspects of the project
15 and it gets even more complicated because we also have another county involved, Prince
16 George's County and what are they going to bring to the table.

17 So, that kind of discussion will have to happen late this winter and I would suspect prior to
18 when the New Starts application being made because they're going to need to propose a
19 funding package at that point.

20 NANCY FLOREEN: Is that right?

21 The...

22 MICHAEL MADDEN: That's true.

23 I would assume that that would...

24 NANCY FLOREEN: Our obligation would have to be pretty straightforward at that point.

25 MICHAEL MADDEN: I would assume that those kinds of discussions would be included in
26 the decision in terms of the preferred alternative.

27 NANCY FLOREEN: So, we'll need to have sorted that out by March?

28 He said April.

29 Well, that'd be convenient, right as we do the budget.

30 MICHAEL MADDEN: Right.

31 NANCY FLOREEN: Okay.

32 Great.

33 Okay.

34 Well, we're going to have an interesting time this winter.

35 A couple minor issues.

36 There are some residences that are proposed to being removed.

37 Is that what I understand?

38 Are there any in Montgomery County?

39 MICHAEL MADDEN: Yes.

40 The--what was quoted in the newspaper article, I think, identified 31 displacements.

41 Those 31 displacements first of all are potential.



October 21, 2008

1 We haven't determined the exact number until we have a more detailed plan...
2 NANCY FLOREEN: So, it depends on the choice of alignment or is-- MICHAEL MADDEN:
3 It also depends on the choice of alignments whether it's a medium or high investment.
4 The 31 displacements also are split.
5 Roughly 17 or 19 of those are business properties, not residential properties.
6 And then, in addition, they're split between Montgomery and Prince George's county.
7 We know of a couple apartment units along the south side of the CSX corridor that may
8 have to be removed.
9 There is a plan to redevelop that site and take all those units in.
10 NANCY FLOREEN: That's Falklands.
11 GLENN ORLIN: Falklands.
12 MICHAEL MADDEN: Falklands in which case, we wouldn't have any impact.
13 But if that plan does not go forward, there would be an impact for several units in part of
14 two of the apartment complexes.
15 There's also one or two residences along the south side further north of that that are very
16 close to the CSX right of way, and then there's a...
17 NANCY FLOREEN: They're downtown Silver Spring type locations?
18 GLENN ORLIN: No, these are in Rosemary Hills.
19 NANCY FLOREEN: Pardon me.
20 MICHAEL MADDEN: It's Rosemary Hills, a couple of houses in Rosemary Hills.
21 NANCY FLOREEN: Twelve, okay.
22 I think it's within.
23 MICHAEL MADDEN: Yeah.
24 And then...
25 NANCY FLOREEN: And Rosemary Hills.
26 All right.
27 That's the one in the CSX?
28 MICHAEL MADDEN: Well, it's along the CSX Corridor, yeah.
29 And then there are some residential impacts in the area of where we would go in a tunnel
30 along Wayne Avenue east of Sligo Creek because of the steep grade.
31 And then there may be another impact on the east side of Flower Avenue, the one with
32 the residences.
33 NANCY FLOREEN: Okay.
34 GLENN ORLIN: One thing that's important...
35 MICHAEL MADDEN: That's the extent of what I know.
36 I know there's a commercial--couple commercial properties that are also I can tell you that
37 may have--would have...
38 NANCY FLOREEN: So, are those property owners aware that they may want to weigh in
39 on this?
40 MICHAEL MADDEN: Yes.
41 They are on our mailing list.



October 21, 2008

1 They're sent information on the project, things like that.
2 NANCY FLOREEN: Did they know...?
3 MICHAEL MADDEN: Some of them we have met with in addition...
4 NANCY FLOREEN: Okay.
5 GLENN ORLIN: And one thing that's important, though, whenever a study is done whether
6 it's Purple Line or ICC or anything else, at this stage for the draft DEIS, the state always
7 presents the maximum impact.
8 NANCY FLOREEN: Sure.
9 GLENN ORLIN: When the project goes to final design, some of these impacts could be
10 possibly worked around-- MICHAEL MADDEN: Exactly.
11 GLENN ORLIN: So it doesn't necessarily mean those houses will be taken.
12 Some of them maybe still in the end but this will be the most that will be taken.
13 NANCY FLOREEN: Okay.
14 Well, thank you very much.
15 MICHAEL MADDEN: Sure.
16 NANCY FLOREEN: And we look forward to working with the details.
17 MICHAEL MADDEN: Okay.
18 Great.
19 MIKE KNAPP: Final question, Councilmember Ervin.
20 VALERIE ERVIN: I will be quick.
21 First of all, I wanted to thank Mike Madden and his staff for their extraordinary efforts at
22 reaching all parts of the community on this Purple Line conversation.
23 I actually live right on the Wayne Avenue alignment and sort of behind it.
24 I could see it from my house.
25 MICHAEL MADDEN: You've reminded me that a few times.
26 VALERIE ERVIN: I want to make sure--I want to make sure you know that.
27 That's why she's very quiet.
28 That is why she's very quiet.
29 VALERIE ERVIN: And so, I want to start with the outreach to the community which I think
30 is going to be really critical in the hearings that are coming up and, clearly, the folks that
31 you've been hearing from are mostly home owners who live in the civic associations along
32 the alignment.
33 I'm talking about Silver Spring right now.
34 And it's always been a concern of mine that 40% of the district that I represent actually live
35 in apartment buildings.
36 Some of the lines you just talked about, Falklands, and many that are along the alignment
37 sort of haven't been weighing in.
38 Now, all of us, this is what we live and breathe many of us every single day.
39 My question has to do with the process for the hearing and what can MTA do to make it
40 more conducive for the folks you haven't seen nor heard from actually be able to make
41 comments at the hearing.



October 21, 2008

1 And I know that you've heard from some folks from the community about the way we have
2 to encourage people to call a phone number at 8 o'clock in the morning prior to--I don't
3 know how the whole process works but it would be really helpful if we could make a few
4 changes around the way we're going to do the hearings to have more public outreach and
5 get to some of the folks who are, A, transit riders right now and, B, you have not seen nor
6 heard from them.

7 Is there something that we can do about that?

8 MICHAEL MADDEN: Well, right now, the process or the protocol that we've laid out
9 provides for limited pre-registration of roughly 30 people for each public hearing.

10 The purpose of that is we didn't want to close it out to people who just, who came, took
11 the trouble to come to the public hearing and wanted to sign up.

12 So, in addition to the pre-registration, people will be able to sign up at the public hearing to
13 talk.

14 We also will provide besides the public testimony, we'll provide another court's
15 stenographer for someone who wants to submit their oral comments, not necessarily in
16 front of the public, off to the side.

17 Obviously, we also have provisions for people just to submit written comments.

18 They can submit written comments through the website, through MTA's website and
19 throughout the 90-day period.

20 And I'm sure these evenings and weekends will be long evenings in terms of trying to
21 accommodate all the people that do want to testify.

22 VALERIE ERVIN: Right.

23 MICHAEL MADDEN: So, there are--we're trying to provide as many ways as possible for
24 people to submit their comments because we are interested in what their comments are,
25 what are their issues, what are their views on the document and on the project itself.

26 VALERIE ERVIN: Okay.

27 Thank you for all your work.

28 MICHAEL MADDEN: Yeah, thank you.

29 MIKE KNAPP: Thank you very much.

30 I look forward to when we get a look, in the report it says January, so that will be coming
31 soon.

32 VALERIE ERVIN: Yup.

33 MIKE KNAPP: Well, we thank you for your efforts.

34 MICHAEL MADDEN: Thank you all.

35 MIKE KNAPP: Look forward to our interactions over the next 90-plus days.

36 MICHAEL MADDEN: Thank you very much.

37 MIKE KNAPP: The Council's next action will be the semi-annual report with Montgomery
38 County Planning Board at Cabin John Regional Park in the Ice Rink building.

39 We are now in recess until 1:30 where we will reconvene there.

40 Thank you very much.

41

October 21, 2008



1